VIRGINIA:

FILED
2011 OCT 18 AM 11:37
CIRCUIT COURT CLERK'S OFFICE
PRINCE WILLIAM COUNTY, VA
BY _____ DEPUTY

IN THE CIRCUIT COURT OF PRINCE WILLIAM COUNTY

THE AMERICAN TRADITION INSTITUTE, and HON. DELEGATE ROBERT MARSHALL, **Petitioners,**	)	
v.	)	**Civil Action No. CL-11-3236**
THE RECTOR AND VISITORS OF THE UNIVERSITY OF VIRGINIA, **Respondent.**	)	
CITY OF CHARLOTTESVILLE	)	
COMMONWEALTH OF VIRGINIA	)	

AFFIDAVIT OF RICHARD C. KAST

On this day, Richard C. Kast personally appeared before me, a certified Notary Public in and for the Commonwealth of Virginia, and after first being duly sworn to tell the truth, testified as follows:

1. My name is Richard C. Kast. As I have previously represented to this Court in an affidavit filed in this matter on May 23, 2011, I have been licensed to practice law in the Commonwealth of Virginia since 1973. I have practiced in the field of higher education since 1985. I have been Associate General Counsel at the University of Virginia ("University") since January 1996.

2. Following the entry by this Court of the protective order on May 24, 2011, I became concerned that press releases and media coverage were misrepresenting the effect of that order in disturbing ways and that these distortions and inaccuracies might indicate that David Schnare and Christopher Horner did not understand their responsibilities pursuant to the order.

3. Immediately following the entry of the protective order, Petitioner Horner himself, in conjunction with Paul Chesser, issued a press release on behalf of The American Tradition Institute ("ATI") stating that "the University was hauled into court" and required to produce the documents sought by ATI "so that ATI can make them available to all who wish to review" them. The press release further stated that "ATI has won the right to look at all of the documents beginning no later than September 21, including those the University refuses to make public." (Exhibit 1.) These representations were obviously antithetical to the spirit, intent, and literal requirements of the protective order and raised concerns in my mind that Mr. Horner did not understand or did not plan to abide by the terms of that order.

4. On May 25, 2011, *The Washington Times* quoted Delegate Robert Marshall, one of the Petitioners in this lawsuit, as follows: "I want to look at what they've given us and examine what they've withheld and see why it's been withheld." This statement concerned me because Delegate Marshall has no access to the exempt documents pursuant to the protective order. (Exhibit 2.)

5. On May 26, 2011, Petitioners Schnare, Horner and Marshall co-wrote an op-ed piece for *The Washington Examiner* entitled: "Yes, Virginia, you do have to produce those 'Global Warming' documents." Petitioners wrote that "[t]he university must also allow attorneys David Schnare and Chris Horner to view any [documents] it believes are exempt from release under FOIA," and noted that although "Schnare and Horner had to promise that they would not disclose the contents of any documents withheld until the court rules on whether UVA's FOIA exemptions are valid, . . . they do get to see all of them. That's a major breakthrough." (Exhibit 3.) Again, these statements were irresponsible and inconsistent with a genuine intent of Petitioners Schnare and Horner to abide by the terms of the protective order.

6. On May 26, 2011, an article appeared in *Commentary* entitled "Climate Scientist Ordered to Release Thousands of Documents." That article quoted Petitioner Horner and stated that the University "must allow . . . David Schnare and Chris Horner to view any [documents] it believes are exempt from release under FOIA—with the burden of proof on UVA." The article further noted that even if the University were to attempt not to disclose exempt documents, those documents would "still have to be shown to the two attorneys who filed the public information request." (Exhibit 4.) Clearly, this latter statement inferred that there was some significance *vis a vis* public disclosure of these documents that was wholly inconsistent with the terms of the protective order.

7. Further disturbing and inaccurate reporting appeared in *The Chronicle of Higher Education*, which reported on May 25, 2011, that the University had "agreed to turn over a potentially enormous trove of climate-research e-mails and other documents to a conservative group that filed a demand for them under the state's Freedom of Information Act," (Exhibit 5); *The Virginian Pilot*, which reported on May 26, 2011: "Under the terms of a legal agreement, the work papers of a former University of Virginia climate change professor will be provided to an advocacy group that requested them earlier this year under the state open records law," (Exhibit 6); and *Inside Higher Ed* which reported on May 26, 2011: "A state judge has ordered the University of Virginia to release documents produced by Michael Mann, who formerly taught there, to a conservative foundation requesting them as open records." (Exhibit 7.)

8. The ATI press release and this reporting reflected a pervasive misunderstanding of this Court's protective order. It troubled me that David Schnare and Christopher Horner either originated or were quoted in most of this disturbingly inaccurate information. It further troubled me that neither had done anything as far as I could determine to correct the record.

9. Before I could express my concerns to David Schnare, he sent me an e-mail on May 26, 2011, stating: "Please let your colleagues know that the noise that has arisen since Tuesday is just noise. I look forward to discussing with you how we can bring our disparate philosophies together into a sensible approach to disclose that which is proper to disclose, without visiting harm on the academic community." (Exhibit 8.)

10. On May 27, 2011, I responded to Dr. Schnare noting that, while the University was used to the hyperbole and error that had pervaded much of the reporting on ATI's Freedom of Information Act request, some of what he had characterized as "noise" following the hearing in this Court had been "particularly disturbing in its implication that the Protective Order did not exist or was of no moment." I asked for a specific reassurance from him and Mr. Horner that they remained fully aware of "the requirements for confidentiality and nondisclosure imposed by [this] Court." (Exhibit 9.)

11. Dr. Schnare responded to my May 27 e-mail on the same date acknowledging that the "most disturbing reporting suggested that we would use any knowledge we gain to game the system." He further noted: "[P]lease reassure your colleagues that I will countenance no abrogation of our duty to the court and to UVA." (Exhibit 10.) On June 1, 2011, Dr. Schnare further noted: "Both Mr. Horner and I take our responsibilities to the Court very seriously, but understand the sensitivities at issue in this highly public matter. To that end, Mr. Horner will send you an email documenting his full understanding of the responsibility he took on when he signed the attachment to the protective order and his continuing commitment to that." (Exhibit 11.) Also on June 1 Mr. Horner furnished the referenced e-mail noting that if the University's general counsel had any concerns about his adherence to the protective order, he should contact him directly. (Exhibit 12.)

12. On May 31, 2011, Dr. Schnare sent me an e-mail in which he noted: "I am angered and upset at the mostly irrational and surely uncivil discussion going on (especially on influential internet blogs) with regard to the differences between UVA and GMU in handling our recent FOIA requests, and ATI has done little to help in that regard." (Exhibit 13.) While this statement has the right words, the fact is that Mr. Schnare was then and remains a key staff member of ATI, not some innocent bystander. *See Staff & Board of Directors*, AMERICAN TRADITION INSTITUTE, http://www.atinstitute.org/about/staff-board-of-directors (last visited Oct. 14, 2011.

13. Not surprisingly, the vast amount of misinformation, distortion, and "irrational and surely uncivil discussion" that followed this Court's entry of the protective order on May 24, 2011, resulted in a vast outpouring of concern from University faculty, faculty and scientists at other institutions, and professional groups such as the AAUP, the ACLU of Virginia, and the Union of Concerned Scientists. (See representative letters collected at Exhibit 14.) In addition, I myself received communications directly expressing concerns about the University's perceived capitulation to ATI and lack of concern for research integrity and academic freedom. (Exhibit 15.) This groundswell of concern fueled by the pervasive misinformation in the media about what the University had actually agreed to was understandably of concern to University President Teresa Sullivan who responded to it. (Exhibit 16.)

14. More disturbing than the concerns fueled by misinformation, however, were the concerns that remained in the minds of those who perfectly well understood the requirements for confidentiality imposed by the protective order, but nonetheless did not believe that Petitioners Schnare and Horner could be trusted to abide by those requirements. These concerns derived not just from the very public zeal of ATI to discredit Michael Mann (see Exhibit 17 where Dr.

Mann's image is used on the ATI website and described as "discredited" and seeking to keep his University records "hidden from the taxpayer"), but also from the fact that, unlike most situations in which attorneys are granted access to confidential information pursuant to a protective order, Dr. Schnare and Mr. Horner were not just counsel for the Petitioners in this case, they *were* two-thirds of Petitioners in this case.

15. On August 31, 2011, to respond to concerns that had been raised about the possibility of someone seeking access to the documents that were to be shared with Dr. Schnare and Mr. Horner pursuant to the protective order through the issuance of a civil investigative demand, subpoena, or other such demand, I wrote to Dr. Schnare seeking his and Mr. Horner's assurances that they agreed that such attempts could not be successful under the terms of the protective order. (Exhibit 18.)

16. On September 2, 2011, Dr. Schnare wrote to me to assure me that he and Mr. Horner understood the protective order as I did: *i.e.*, it would not allow for their release of documents disclosed to them by the University pursuant to its terms to be further disclosed to third parties in response to a civil investigative demand, subpoena, or other demand. (Exhibit 19.)

17. Because of the numerous and recurrent concerns that had been raised about the protective order, as detailed above, my colleague and co-counsel in this matter, Madelyn Wessel, sent a letter dated September 20, 2011 (the letter was actually transmitted electronically on September 21) to Dr. Schnare proposing an alternative mechanism for review and inviting Dr. Schnare's comments. (Exhibit 20.)

18. On September 29, 2011, having heard no response from Dr. Schnare. Ms. Wessel inquired when he might be available to discuss the proposal made in her September 20 letter.

Dr. Schnare responded that he had been in the midst of "a particularly upsetting family crisis" and further stated: "Among other things, tomorrow is my last day as an employee of the U.S. EPA, and I've had to close out a large caseload as well as deal with all manner of federal records matters." (Exhibit 21.)

19. Dr. Schnare's statement of his continuing employment status with the EPA through September 30, 2011, came as a complete surprise to me because on May 24, 2011, prior to my appearance in this Court that resulted in the entry of the protective order, Dr. Schnare had told me that he had worked for the EPA but now was doing public interest law and handling such matters as the FOIA request currently before this Court.

20. On September 29, 2011, I communicated my surprise and concern about Dr. Schnare's apparent misrepresentation to him, noting: "I must say that I am surprised and frankly disturbed by your revelation that you are just now leaving the EPA. You told me when we first met before the initial court appearance in Prince William County Circuit Court on May 24th that you had formerly been with the EPA and were then, and had been for a while, a private, public-interest lawyer." (Exhibit 22.)

21. Dr. Schnare responded: "I have had authority from the agency to do pro bono public interest law for over 5 years now. That is what I represented to you." He further noted that he never mentioned EPA duties when doing non-EPA work and never used EPA facilities for private work. (Exhibit 23.) At no time on May 24 or at any subsequent time prior to his e-mail of September 29 had Dr. Schnare ever represented to me that he continued to be employed by the EPA or had had authority to do pro bono public interest law work for over 5 years or for any other period of time. Dr. Schnare had repeatedly sought to convince me and my co-counsel that our expressions of concern about potential misuse of the documents to be provided under the

protective order were insulting to someone who had been an EPA lawyer handling highly confidential documents over a long career. Indeed, he made a similar argument to this court, stating at the hearing on September 16, 2011 that: "Now, because of some dispersions cast, we want to make it clear, Your Honor. I have been a federal prosecutor on environmental issues. I have had access to extremely sensitive business information. If I were a corrupt man, I would not be here today on cash games, insider training, and retiring in Bermuda." (Exhibit 24)

22. To attempt to understand the confusion about Dr. Schnare's employment status, and discuss with him Ms. Wessel's proposal in her September 20 letter, Ms. Wessel and I scheduled a telephone call with him on October 3, 2011. Prior to that conversation, Dr. Schnare sent us an e-mail stating that he wanted us to explain "the nature of [our] concern about the fact that [he] was an employee of EPA, operating under an outside employment waiver, prior to October 1, 2011." He further stated that he had "explained" to me that he "had worked for EPA," but "never made a specific statement as to [his] current employment other than as to [his] pro bono representation in the instant case and [his] general responsibilities for ATI, and had every good and ethical reason to say no more." (Exhibit 25.)

23. On October 3, 2011, in his conversation with Ms. Wessel and me, Dr. Schnare insisted that he had made no misrepresentations to me about his employment status with the EPA and had nothing to apologize for. I vehemently disagreed with these statements and so informed Dr. Schnare.

24. Subsequent to my conversation with Dr. Schnare on October 3, further information came to my attention that confirmed that he had been misleading me about his employment status with the EPA. Specifically, in a letter of October 6, 2011, the Senior Counsel for Ethics with the EPA notified Peter Fontaine, who is representing Michael Mann in his motion

to intervene in this case, that Dr. Schnare had never had the required outside approval "to engage in outside activity that involves the practice of a profession or that deals in significant part with any ongoing Agency program, policy or operation." Moreover, although a "request for approval of the outside activity was purportedly prepared by Mr. Schnare on or about November 16, 2010, . . . neither his Deputy Ethics Official nor his Assistant Deputy Ethics Official has any record of receiving it or approving this request to engage in the outside activity." (Exhibit 26.)

25. My review of the request for approval "purportedly prepared" by Dr. Schnare revealed that, even had it been received and approved by the appropriate officials at the EPA, it would not have authorized the work he has undertaken for ATI as counsel in this lawsuit because Dr. Schnare clearly and unambiguously represented: "My duties would not include any representation at law of the Institute or its members. Institute and affiliated attorneys will conduct all representation of any matters at law." (Exhibit 27.)

26. Further, Dr. Schnare's memorandum states that "All services will be performed entirely outside normal duty hours." (Exhibit 27.) However, a review of the e-mail communications I have received from Dr. Schnare since I became involved with ATI's Freedom of Information Act request in mid-February (the request was made January 6, 2011), reveals that I have received 58 messages from Dr. Schnare from February 17 to September 29, 2011. (Exhibit 28.) Most of these e-mails were sent between 8:30 a.m. and 5:00 p.m. and all were sent on week days and on days that were not federal holidays. Moreover, during this same time period, Dr. Schnare has filed voluminous pleadings in this Court during regular business hours. Mr. Schnare also sent emails to my co-counsel Madelyn Wessel and to the University's Public Affairs Office during regular business hours. (Exhibit 29).

27. The fact that Dr. Schnare has, for whatever reason, felt compelled to make misleading statements to me about his employment status with the EPA, and demonstrably false statements about his having obtained the requisite approvals to represent ATI in this lawsuit while still being employed by the EPA, is extremely troubling and has destroyed Dr. Schnare's credibility in my mind. Under the circumstances, I cannot feel comfortable with the representations he has made to me about his intent fully to abide by the terms of the protective order. The behavior of Mr. Horner documented in this Affidavit also creates the same concerns. Mr. Horner is also not licensed to practice in Virginia and is therefore not subject to ethical duties and standards set by the Virginia Bar.

R. C. Kast

Richard C. Kast

Seen to and subscribed before me this 17 day of October, 2011.

Bukurije Aljiji

My commission expires: 11/30/2014

BUKURIJE ALJIJI
Notary Public
Commonwealth of Virginia
7073994
My Commission Expires Nov 30, 2014

Court Orders University of Virginia to Produce Documents of Dr. Michael Mann

share

EXHIBIT
1

FOR IMMEDIATE RELEASE
Wednesday, May 25, 2011
Contacts:
Christopher Horner, chris.horner@atinstitute.org
Paul Chesser, paul.chesser@atinstitute.org

MANASSAS, Va.—On Tuesday, more than four months after the American Tradition Institute's Environmental Law Center requested emails and other files from a specifically identified University of Virginia back-up computer, the University was hauled into court and made to stand and agree to comply with the Commonwealth's Freedom of Information Act (FOIA).

See all court documents, press releases, media coverage of ATI's case against UVA

Under Virginia's FOIA, ATI and co-petitioner Delegate Bob Marshall (R-Manassas) asked UVA to disgorge the emails and files that Virginia's Attorney General also sought under other authority. The emails are specific communications sent and received by Dr. Michael Mann during his tenure at UVA in which he corresponded with, or discussed other, leading voices that represent the climate alarmist perspective. Seminal among them include discussions about his now infamous and discredited 1,000-year temperature reconstruction known as the "hockey stick." There also already appears — from records ATI has received – to be additional information of the kind released in the "Climategate" emails that originated at the Climatic Research Unit at East Anglia University.

Under FOIA the University was required to produce the documents within five days of its receipt of payment for "accessing, duplicating, supplying or searching" for the documents. Alternatively they could have entered into an agreement with ATI on when they would supply the documents, or they could have gone to court to ask for more time. They did none of the above. Instead they promised to provide some of the documents "shortly" on April 6; then specifically on May 6, 2011; and always stated they would get to the others later on. They did none of this either, so ATI went to court to compel production and compliance with the law.

ATI finally received the first approximately 20 percent of the 9,000 pages of documents that UVA says are responsive to ATI's request and that it possesses, only after ATI filed its petition, and two working days before the judicial hearing. Most of what ATI received in this seemingly hurried production, which was more focused on showing volume than content, were ads for Halloween costumes, public news releases from lay

and scientific journals, and a few emails that were printed in computer code so as to be unintelligible in that form. Despite this product of (according to the University) 75 hours of review and more than four months, the University stopped work on producing anything further. Nevertheless some substance made it through UVA's filter, which ATI will discuss after we review the withheld records.

The failure of UVA to honor its own commitments or to follow the law forced ATI to petition the court for relief. ATI filed its petition on May 16th, and the Court heard the matter Tuesday.

It took a petition to force UVA to agree to produce the documents that by statute they should already have produced. The day before the court hearing, UVA finally agreed to a date when they must produce all the documents they believe are not protected from disclosure. The court entered an order that forces UVA to honor that agreement and to produce the documents in easy-to-read electronic form so that ATI can make them available to all who wish to review the work of this highly controversial former Virginia employee. They must produce those documents by August 22nd.

In addition ATI has won the right to look at all the documents beginning no later than September 21, including those the University refuses to make public. The court issued a protective order that allows ATI's attorneys, David Schnare and Christopher Horner, to see them all so that they can challenge any further UVA refusals to supply what the public paid for. The records constitute a history of the "hockey stick" and the activities of Michael Mann, who also during the relevant time served on, e.g., the UN's IPCC, all of which have been the subject of intense scrutiny.

"By the end of this year, ATI and UVA will obtain judicial review of the University's obligation to fulfill the public's right to know how taxpayer-funded employees use the taxpayer's resources," said Mr. Horner, director of litigation at ATI's Environmental Law Center. "The court will determine whether this can be hidden behind the ivy covered walls of our public colleges and universities under a non-existent FOIA exemption of 'academic freedom,' which Virginia's legislature has never recognized."

ATI also put a final issue before the court. Under the Virginia FOIA, UVA is not allowed to impose fees on ATI to recoup the general costs of creating or maintaining records, or of transacting the general business of the University. The University has already admitted that it must obey several laws in fulfillment of its duty to protect some of its records, such as medical files and student information. This is part of the business of the University, just as any governmental body must protect its sensitive records. UVA, however, demanded that ATI pay $8,500 to offset UVA's costs of doing precisely this regular business, which must be performed when releasing any information, under any authority. ATI argued, and existing case law indicates, this is simply not allowed. The University disagreed, and the court will issue its opinion on that matter on June 15th.

"ATI pursues important public issues," said Dr. Schnare, director of ATI's Environmental Law Center. "This case is about whether the government can put up a pay wall to frustrate the public's right to transparency. If it can, the public can't hold government employees to the high standards of conduct they should meet."

See Prince William County (Va.) Court's Order to Produce Documents in ATI Environmental Law Center's Freedom of Information Act case against the University of Virginia (PDF).

See Prince William County (Va.) Court's Order on Protection of Documents in ATI Environmental Law Center's Freedom of Information Act case against the University of Virginia (PDF).

For an interview with American Tradition Institute senior director of litigation Christopher Horner, email chris.horner@atinstitute.org *or call (202)670-2680.*

You are currently viewing the printable version of this article, to return to the normal page, please click here.

The Washington Times

Ruling alters climate-papers fight

Judge's order to UVa. to turn over documents welcomed by Cuccinelli

59 Comments and 54 Reactions | Share Tweet | Email | Print | Like

By Paige Winfield Cunningham

-

The Washington Times

Wednesday, May 25, 2011

Virginia Attorney General Kenneth T. Cuccinelli II says a judge's order compelling the University of Virginia to turn over thousands of pages of climate-change research will likely alter his own battle for the long-sought documents.

The Republican attorney general and state Delegate Robert G. Marshall have battled the university for more than a year over the release of documents related to the work of former professor Michael Mann. Mr. Mann had been involved in a leaked email exchange with colleagues that climate-change skeptics claimed showed scientific misconduct.

Mr. Marshall, Prince William Republican, requested the documents through the Freedom of Information Act, whil Mr. Cuccinelli subpoenaed them. Mr. Cuccinelli said an order issued Tuesday in Prince William County Circuit Court that grants Mr. Marshall's request could affect his own appeal to the state Supreme Court to reverse a previo ruling in favor of the university.

"It certainly can affect what we're doing," Mr. Cuccinelli said. "If they essentially disgorge everything, there's no cause for them to be going to court to try and cover it up."

He said he plans to review the documents and "see how the process unfolds."

"If, as and when we get copies of the stuff, we'll see what's responsive," he said. "It's kind of hard to tell what isn't produced. You don't see what isn't there."

The university has so far turned over 20 percent of the 9,000 pages of documents it says are responsive to a reques from the American Tradition Institute (ATI), a conservative-leaning, environmentally focused group that joined forces with Mr. Marshall in January. ATI filed a petition last week, saying the university had failed to respond to a information request filed early this year.

A judge has given the university until Aug. 22 to supply the rest of the documents. Mr. Marshall said he was pleas with the decision, but is skeptical the university will hand over everything he has requested.

"I want to look at what they've given us and examine what they've withheld and see why it's been withheld," Mr. Marshall told The Washington Times. "The more they stonewall, the more they're making Richard Nixon look like choirboy."

University spokeswoman Carol Wood said the university has been in "frequent and regular contact" with ATI



lawyers, working to clarify their request and work out a "reasonably manageable process" to satisfy the public information law.

Mr. Marshall enlisted ATI's help after a year of pursuing the climate-change documents on his own. After submitting his first information request in December 2009, the university told him it no longer possessed the materials he requested. In response to a second request the following spring, he was told it would cost $8,500 to prepare the documents.

While state law allows public agencies to charge a reasonable sum to compensate for time and effort in meeting public information requests, Mr. Marshall and ATI said the university was charging an unreasonable sum. The cou has yet to determine how much the university may charge to meet the request.

"This case is about whether the government can put up a pay wall to frustrate the public's right to transparency," said David Schnare, director of the ATI Environmental Law Center. "If it can, the public can't hold government employees to the high standards of conduct they should meet."

blog comments powered by **DISQUS**

· **Ads by Google** Halloween Uva Uva Da Tavola The Halloween Club

Yes, Virginia, you do have to produce those 'Global Warming' documents

By: Christopher C. Horner, David W. Schnare and Robert Marshall | 01/05/11 9:05 PM
Op-Ed Contributors

Today, Virginia taxpayers, a state lawmaker and a public interest law firm are asking the University of Virginia to produce important "global warming" records under that state's Freedom of Information Act. These are records the school no longer denies possessing but nonetheless refuses to release, even to Attorney General Ken Cuccinelli. They address one of the most high-profile claims used to advance massive economic-intervention policies in the name of "global warming."

In response to a previous FOIA request, U.Va. denied these records existed. However, during Cuccinelli's pre-investigation under the Virginia Fraud Against Taxpayers Act ("FATA"), a 2007 law passed unanimously by Virginia's legislature, which clearly covers the work of taxpayer-funded academics, U.Va. stunningly dropped this stance. For this reversal, the taxpayers of Virginia owe Cuccinelli a debt of gratitude.

Still, the school has spent upward of half a million dollars to date fighting Cuccinelli's pursuit, now before the Virginia Supreme Court. However, Virginia's transparency statute FOIA gives the school one week to produce the documents, and offers no exemption for claims U.Va. is using to block Cuccinelli's inquiry.

These e-mails and other documents relate to claims made by Michael Mann to obtain, and claim payment under, certain taxpayer-funded grants. Mann worked at the university's department of environmental sciences when he produced what was hailed at the time as the "smoking gun" affirming the theory of catastrophic man-made global warming.

Despite that lofty honorific, persistent controversy led promoters of this notorious "Hockey Stick" graph (principally, the United Nations' Intergovernmental Panel on Climate Change or IPCC) to stop advancing it as serious work.

Leaked "ClimateGate" e-mails discussing these same controversies prompted Cuccinelli's pre-investigation. Sadly, in order to keep the taxpayers' advocate from examining the evidence, U.Va. has offered a series of twists on a novel defense of "academic freedom."

Now we with the American Tradition Institute's environmental law center have requested these documents under FOIA and will presumably put an end to these tactics of denial followed by delay.

Importantly, also under FOIA in late 2009, the pressure group Greenpeace sought, and was promised, e-mails and other materials of Patrick Michaels, who also formerly worked in the same university department.

EXHIBIT
tabbies
3

While the university proceeded to compile the material for Greenpeace, one of us, Virginia Del. Bob Marshall, R-Prince William, thought to ask for records relating to Michaels' former colleague, Mann. Oddly, the university informed Marshall that such records no longer existed because Mann had left the department.

Michaels has stated that the university, in explaining to him these disparate responses, asserted that some people's records are treated differently than others. Mann's were allegedly destroyed; Michaels' were being packaged for delivery to Greenpeace.

One disparity possibly helping to explain the other was that Mann had been an active participant in the IPCC, obtaining many research grants for his work at U.Va. But Michaels had been a very politically incorrect, high-profile "skeptic" of catastrophist claims such as those represented by the IPCC, and particularly Mann's Hockey Stick.

In court in August, U.Va. opted against robustly defending, as a legal argument, its academic-freedom rationale for refusing to produce the records. Yet even this week, it is asking the Virginia Supreme Court to deny Cuccinelli's request for documents possibly showing whether the dense Hockey Stick smoke indeed indicates fire. This does Virginia taxpayers a disservice.

Other records obtained under FOIA reveal that U.Va. has been paying Washington lawyers several thousand dollars per day to deny the requested transparency. As such, in a separate request, we also seek information about this privately underwritten effort to avoid complying with Cuccinelli's inquiry.

The university has previously demanded taxpayers pay thousands of dollars for a FOIA search for Mann's records, on the grounds that it maintains a broadly dispersed record-keeping system. Therefore, we have specifically directed the school to only search the backup server it claimed to the attorney general's office that it finally located as the likely home of the Mann records. As such, demands for huge search fees should not be an obstacle.

We hope for prompt university compliance with FOIA, although we are prepared to fully protect our appellate rights. As Virginia taxpayers, we also hope to see U.Va. rise to its reputation and reflect the highest fidelity toward its statutory and other obligations.

We can then, finally, determine what it is that so many have gone to such great lengths to keep the public from knowing about that for which the public has paid.

Christopher C. Horner is senior director of litigation for the American Tradition Institute's law center and a Virginia resident; David W. Schnare, Ph.D is a Virginia resident and a federal attorney, Del. Bob Marshall is a Virginia Republican delegate representing Prince William County.

http://washingtonexaminer.com/opinion/op-eds/2011/01/yes-virginia-you-do-have-produce-those-global-warming-documents#ixzz1aZvY17AT

Commentary

Contentions

Climate Scientist Ordered to Release Thousands of Documents

Alan Goodman/@alanagoodman 05.26.2011 – 1:29 PM

After ClimateGate, when a trove of emails from an East Anglia climate research institute appeared to show scientists conspiring to distort date on global warming, other public climate centers were asked to release similar email exchanges under the Freedom of Information Act. Documents from the University of Virginia were of particular interest, because one of its professors, scientist Michael Mann, was at the center of the ClimateGate controversy.

UVa has refused to release Mann's emails for over a year, but now it looks as if the public might finally get a glimpse at some of these exchanges. The university has been court-ordered to turn over 9,000 of Mann's correspondences within the next 90 days, the *Washington Examiner*'s Barabara Hollingsworth reports:

The documents must be released electronically, unlike the printed "hieroglyphics" UVA has released to date. The university must also allow [American Tradition Institute] attorneys David Schnare and Chris Horner to view any it believes are exempt from release under FOIA—with the burden of proof on UVA. "The court will determine whether the public's right to know how taxpayer-funded employees use the taxpayers' resources can be hidden behind the ivy-covered walls of our public colleges and universities under a non-existent FOIA exemption," Horner said in a statement.

UVa may try to hold back some of the most damaging documents by claiming they are exempt from FOIA, but as Hollingsworth points out, these exchanges will still have to be shown to the two attorneys who filed the public information request.

If the documents released by UVa are half as damning as the ones from East Anglia, it will be a serious obstacle for both the scientists who peddle the anthropogenic global warming theory and for lawmakers who favor climate change legislation. A Rasmussen poll from April found that 47% of voters say long-term planetary changes are primarily responsible for climate change, while 36% said that human activity is primarily at fault. This perception will likely grow if more corruption among climate scientists is uncovered, which could be one reason why UVA was so resistant to handing over these documents.

EXHIBIT

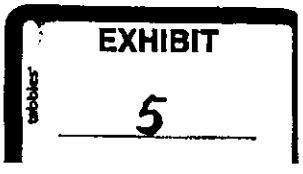
4

The Chronicle of Higher Education

U. of Virginia Agrees to Release Climate Researcher's E-Mails

May 25, 2011, 2:29 pm

The University of Virginia has agreed to turn over a potentially enormous trove of climate-research e-mails and other documents to a conservative group that filed a demand for them under the state's Freedom of Information Act. The demand centers on more than a decade's worth of e-mail messages from, to, and about Michael E. Mann, a climate scientist who left the university in 2005 to become director of a research center at Pennsylvania State University. The organization, called the American Tradition Institute, joined with a Republican state legislator to file its request after the university went to court to fight an attempt by Virginia's attorney general, Kenneth T. Cuccinelli II, to use a different law to get the same documents, which he said he needed to investigate possible climate-research fraud. In a court document signed yesterday, the university said it would produce the materials within three months.





Hampton Roads, VA - 10/10/2011
72° Overcast
Forecasts | Doppler Radar
Traffic Cameras & VDOT Alerts

Pilot on Politics



What's happening in the world of politics and lawmaking in Richmond, Hampton Roads and around Virginia? Our Pilot on Politics reporters share tips, tidbits and stories here on our the Pilot on Politics blog. What do you know? Post your comments.

Category: Virginia News

Subscribe to this blog

25 MAY 2011 | 5:17 PM

U.Va. to release climate change papers to interest group

Under the terms of a legal agreement, the work papers of a former University of Virginia climate change professor will be provided to an advocacy group that requested them earlier this year under state open records law.

The agreement was reached Tuesday in Prince William County Circuit Court.

The American Tradition Institute and Del. Bob Marshall, R-Prince William, seek e-mails and other files of noted climate change scientist Michael Mann that are held by the university.

Mann's conclusions have been heralded as proof of climate change by some, and dismissed as faulty science by skeptics.

For more than a year, Attorney General Ken Cuccinelli has been after similar documents from U.Va. as part of an investigation into possible fraud related to taxpayer-funded grants awarded during Mann's tenure.

The institute initially asked for the records in January.

Officials claim U.Va. has been slow in responding to that request, even after the school was paid $4,000 to cover document reproduction costs.

University officials counter that they negotiated with the institute and have been clear that the process of retrieving the documents is time consuming.

The institute recently asked a court to intervene. The agreement between the parties specifies that U.Va. is to turn over all documents within 90 days of the order issued Tuesday.

(About one-fifth of the roughly 9,000 pages of documents sought have been provided to the institute.)

Cuccinelli's pursuit of those records is ongoing in court.

UPDATE: A U.Va. spokeswoman said the judge who heard the matter expects to issue a ruling by June 15.

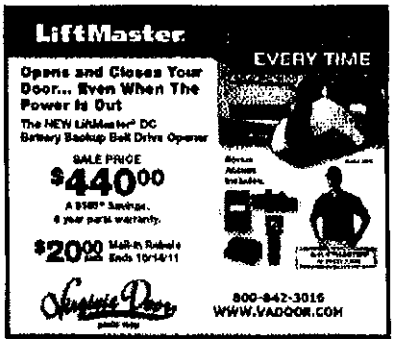
An unresolved issue before the court is whether state law allows the university to be reimbursed for the cost of reviewing documents before they are released or whether the university must absorb it.

– Julian Walker

Login or register to post comments View 2 comments Link to post

COMMENTS ADVISORY: Users are solely responsible for opinions they post here; comments do not reflect the views of The Virginian-Pilot or its websites. Users must follow agreed-upon rules. **Be civil, be clean, be on topic; don't attack private individuals, other users or entire classes of people.** Read the full rules here.
- Comments are automatically checked for inappropriate language, but readers might find some comments offensive or inaccurate. If you believe a comment violates our rules, click the report violation link below it.

[-] Hide Comments





TOOLBOX
Print
Email

SAVE & SHARE
Delicious
Digg
Reddit
Facebook
Twitter
Google
Yahoo

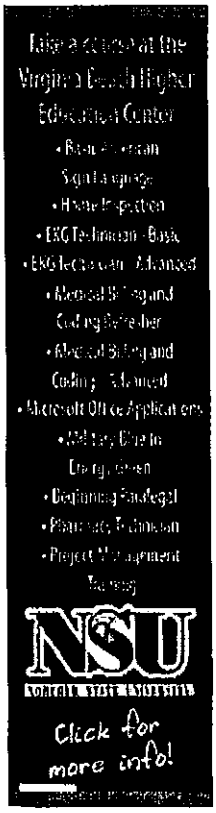


EXHIBIT
6

INSIDE HIGHER ED

Advertisement

Quick Takes

May 26, 2011

Michigan Pays $550,000 to Settle Suit With Former Prof

The University of Michigan has agreed to pay Andrei Borisov, a former non-tenured faculty member in pediatrics, $550,000, and to remove certain negative statements from his personnel file, to settle his suit against the university, AnnArbor.com reported. Borisov had resigned in 2008, after being told that his behavior was seen as threatening, following inquiries he had been making into possible plagiarism in reports to federal agencies that made grants to Michigan. The university denied wrongdoing in those cases.

Compromise on Foundation Bill in California

California's public higher education systems have agreed to drop opposition to a state bill that will require much more disclosure of records about their foundations and auxiliary operations. However, the colleges and universities have been assured of provisions that will preserve in most cases the right of donors to be anonymous. With the agreement, the bill is expected to be enacted.

Judge Orders U.Va. to Release Researcher's Documents

A state judge has ordered the University of Virginia to release documents produced by Michael Mann, who formerly taught there, to a conservative foundation requesting them as open records, *The Washington Examiner* reported. Mann is a climate researcher whose work is consistent with the scientific consensus on climate change, but who is doubted by some conservatives. In an e-mail, Mann said: "I think it's very unfortunate that fossil fuel industry-funded climate change deniers ... continue to harass U.Va., NASA, and other leading academic and scientific institutions with these frivolous attacks."

Academic Minute: Passive Hearing, Active Listening

In today's Academic Minute, Rensselaer Polytechnic Institute's Pauline Oliveros examines the difference between passive hearing and active listening. Find out more about the Academic Minute here.

Movers and Shakers: Columbia College Chicago, Grinnell College, Loyola U. Chicago, Simmons College, U. of New Haven

- Judy A. Beal, interim dean of the School of Nursing and Health Sciences at Simmons College, has been named to the job on a permanent basis.
- Beth Halloran, assistant vice president for development at the University of Michigan at Ann Arbor, has been appointed as vice president for development and alumni relations at Grinnell College.
- Ronald S. Harichandran, chair of the department of civil and environmental engineering at Michigan State University, has been selected as dean of the Tagliatela College of Engineering at the University of New Haven, in Connecticut.
- Onye Ozuzu, associate chair and director of dance in the department of theatre and dance at the University of Colorado at Boulder, has been named chair of the dance department at Columbia College Chicago.
- Carol Rozansky, professor of education at the University of Nebraska at Omaha, has been chosen as chair of the education department at Columbia College Chicago.
- Darrell P. Wheeler, associate dean for research and community partnerships at Hunter College of the the City University of New York, has been selected as dean of the School of Social Work at Loyola University Chicago.

EXHIBIT
tabbies
7

Kast, Richard (rck4p)

From: Dr. Schnare <schnareati@gmail.com>
Sent: Thursday, May 26, 2011 2:47 PM
To: Kast, Richard (rck4p)
Subject: Quick note

Rick:

Please let your colleagues know that the noise that has arisen since Tuesday is just noise. I look forward to discussing with you how we can bring our disparate philosophies together into a sensible approach to disclose that which it is proper to disclose, without visiting harm on the academic community. I've been thinking about how to do that, and before our side begins to sift through the excluded documents, I'd like to take some time to come down to the school and sit with you and faculty representatives to discuss these issues. Maybe it won't result in anything, but I hold out hope that it will.

Nice to meet you in person and hope you have a safe holiday weekend.

David.

--

David W. Schnare, Esq. Ph.D.
The Law Center at ATI

EXHIBIT
tabbies
8

Kast, Richard (rck4p)

From: Kast, Richard (rck4p)
Sent: Friday, May 27, 2011 3:26 PM
To: 'Dr. Schnare'
Subject: RE: Quick note

David:

Thanks for the note. While we are used to the hyperbole and error that has pervaded much of the reporting on this matter, some of what you characterize as "noise" after Tuesday's court hearing was particularly disturbing in its implication that the Protective Order did not exist or was of no moment. I would appreciate your reassurance that you and Mr. Horner remain fully aware of the requirements for confidentiality and nondisclosure imposed by the Court, and will do what you can to dispel the misinformation that provided the basis for such articles as the one that appeared in "The Washington Times." As I'm sure you can imagine, there has been a good deal of discussion here after that article about whether we need to seek further assurances from the Court to be able to continue to have faith in the process agreed to Tuesday.

I hope you have a good holiday weekend as well. I will be in touch next week.

- Rick

From: Dr. Schnare [mailto:schnareati@gmail.com]
Sent: Thursday, May 26, 2011 2:47 PM
To: Kast, Richard (rck4p)
Subject: Quick note

Rick:

Please let your colleagues know that the noise that has arisen since Tuesday is just noise. I look forward to discussing with you how we can bring our disparate philosophies together into a sensible approach to disclose that which it is proper to disclose, without visiting harm on the academic community. I've been thinking about how to do that, and before our side begins to sift through the excluded documents, I'd like to take some time to come down to the school and sit with you and faculty representatives to discuss these issues. Maybe it won't result in anything, but I hold out hope that it will.

Nice to meet you in person and hope you have a safe holiday weekend.

David.

--

David W. Schnare, Esq. Ph.D.
The Law Center at ATI

EXHIBIT
tabbies
9

Kast, Richard (rck4p)

From: ATImail <schnareati@gmail.com>
Sent: Friday, May 27, 2011 4:15 PM
To: Kast, Richard (rck4p)
Subject: Re: Quick note

Rick,

The most disturbing reporting suggested that we would use any knowledge we gain to game the system.

I responded to one blog, explaining that Horner and I are honorable men that are professionally bound to honor both the letter and the spirit of the law and our personal commitments. Further, I made a strong point on this to one reporter. None of that made it into print, sadly. Nevertheless, please reassure your colleagues that I will countenance no abrogation of our duty to the court and to UVA. Finally, it just is not how I do law.

Best
d

D W Schnare

On May 27, 2011, at 3:25 PM, "Kast, Richard (rck4p)" <rck4p@eservices.virginia.edu> wrote:

> David:
>
> Thanks for the note. While we are used to the hyperbole and error that has pervaded much of the reporting on this matter, some of what you characterize as "noise" after Tuesday's court hearing was particularly disturbing in its implication that the Protective Order did not exist or was of no moment. I would appreciate your reassurance that you and Mr. Horner remain fully aware of the requirements for confidentiality and nondisclosure imposed by the Court, and will do what you can to dispel the misinformation that provided the basis for such articles as the one that appeared in "The Washington Times." As I'm sure you can imagine, there has been a good deal of discussion here after that article about whether we need to seek further assurances from the Court to be able to continue to have faith in the process agreed to Tuesday.
>
> I hope you have a good holiday weekend as well. I will be in touch next week.
>
> - Rick
>
> **From:** Dr. Schnare [mailto:schnareati@gmail.com]
> **Sent:** Thursday, May 26, 2011 2:47 PM

EXHIBIT
tabbies
10

To: Kast, Richard (rck4p)
Subject: Quick note

Rick:

Please let your colleagues know that the noise that has arisen since Tuesday is just noise. I look forward to discussing with you how we can bring our disparate philosophies together into a sensible approach to disclose that which it is proper to disclose, without visiting harm on the academic community. I've been thinking about how to do that, and before our side begins to sift through the excluded documents, I'd like to take some time to come down to the school and sit with you and faculty representatives to discuss these issues. Maybe it won't result in anything, but I hold out hope that it will.

Nice to meet you in person and hope you have a safe holiday weekend.

David.

--

David W. Schnare, Esq. Ph.D.

The Law Center at ATI

Kast, Richard (rck4p)

From: Dr. Schnare <schnareati@gmail.com>
Sent: Wednesday, June 01, 2011 12:14 PM
To: Kast, Richard (rck4p)
Cc: Chris Horner
Subject: Re: Proposed meeting

Rick:

Thanks for your timely response. Both Mr. Horner and I take our responsibilities to the Court very seriously, but understand the sensitivities at issue in this highly public matter. To that end, Mr. Horner will send you an email documenting his full understanding of the responsibility he took on when he signed the attachment to the protective order and his continuing commitment to that.

On a second point, although it was my suggestion, we would like to pull back from one aspect of this meeting. The principle decision-making parties to this matter are the Rector, for whom the Provost is standing in, and those who provide advice to the Provost, including the general counsel (and staff) who are the attorneys of record, as well. This list does not include the Chair of the Faculty Senate, and as such, we would rather no one attend in that role.

I am free most of next week. I am not sure whether Mr. Horner will be available to attend, but if he is, he will provide you dates when he is available.

Best regards,
David

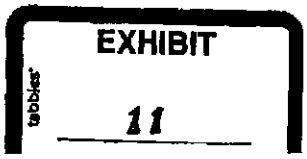
On Wed, Jun 1, 2011 at 11:36 AM, Kast, Richard (rck4p) <rck4p@eservices.virginia.edu> wrote:

David:

I have discussed your proposal with the General Counsel. We are willing to arrange a meeting but he has asked that we first receive reassurance from Mr. Horner that he too understands and appreciates the requirements imposed by the Protective Order. I'm sure that you believed you were responding for him as well in your previous response on this issue but the General Counsel would like to hear from Mr. Horner directly.

Regarding the requested meeting, we would propose that besides me, the following would be in attendance: Paul Forch, the General Counsel; Madelyn Wessel, another lawyer in our office who has been involved with the issues raised by your request; the University Provost Milton Adams; and also the Chair-Elect to the Faculty Senate (the Chair is currently out of town). We can proceed to arrange this when you let me know what dates might work for you over the next week or so.

Let me know if this sounds useful.



Kast, Richard (rck4p)

From: chornerlaw@aol.com
Sent: Wednesday, June 01, 2011 12:49 PM
To: schnareati@gmail.com; Kast, Richard (rck4p)
Subject: Re: Proposed meeting

Dear Rick,

Please assure the general counsel that that is indeed my signature on the Protective Order bearing my name, executed in your presence in Prince William County.

Although this Order will not take meaningful effect until certain events transpire – sooner rather than later is, as you know, our preference – if s/he has any concerns about my adherence to it, please do not hesitate to have him or her contact me directly.

As to the meeting David suggests, I am afraid that I am unavailable to attend anything in-state until between 7th and 18th June. I have every confidence that David can manage in my absence, running any possible formal agreement(s) past me before ATI signs off.

Yours faithfully,
Chris Horner

-----Original Message-----
From: Dr. Schnare <schnareati@gmail.com>
To: Kast, Richard (rck4p) <rck4p@eservices.virginia.edu>
Cc: Chris Horner <CHornerLaw@aol.com>
Sent: Wed, Jun 1, 2011 12:13 pm
Subject: Re: Proposed meeting

Rick:

Thanks for your timely response. Both Mr. Horner and I take our responsibilities to the Court very seriously, but understand the sensitivities at issue in this highly public matter. To that end, Mr. Horner will send you an email documenting his full understanding of the responsibility he took on when he signed the attachment to the protective order and his continuing commitment to that.

On a second point, although it was my suggestion, we would like to pull back from one aspect of this meeting. The principle decision-making parties to this matter are the Rector, for whom the Provost is standing in, and those who provide advice to the Provost, including the general counsel (and staff) who are the attorneys of record, as well. This list does not include the Chair of the Faculty Senate, and as such, we would rather no one attend in that role.

I am free most of next week. I am not sure whether Mr. Horner will be available to attend, but if he is, he will provide you dates when he is available.

Best regards,
David

On Wed, Jun 1, 2011 at 11:36 AM, Kast, Richard (rck4p) <rck4p@eservices.virginia.edu> wrote:
David:

I have discussed your proposal with the General Counsel. We are willing to arrange a meeting but he has asked that we first receive reassurance from Mr. Horner that he too understands and

EXHIBIT
12

appreciates the requirements imposed by the Protective Order. I'm sure that you believed you were responding for him as well in your previous response on this issue but the General Counsel would like to hear from Mr. Horner directly.

Regarding the requested meeting, we would propose that besides me, the following would be in attendance: Paul Forch, the General Counsel; Madelyn Wessel, another lawyer in our office who has been involved with the issues raised by your request; the University Provost Milton Adams; and also the Chair-Elect to the Faculty Senate (the Chair is currently out of town). We can proceed to arrange this when you let me know what dates might work for you over the next week or so.

Let me know if this sounds useful.

- R

From: Dr. Schnare [mailto:schnareati@gmail.com]
Sent: Tuesday, May 31, 2011 8:49 AM
To: Kast, Richard (rck4p)
Subject: Proposed meeting

Rick:

I am angered and upset at the mostly irrational and surely uncivil discussion going on (especially on influencial internet blogs) with regard to the differences between UVA and GMU in handling recent FOIA requests, and ATI has done little to help in that regard. In contrast, and as the Director of our law center, I am committed to a civil and sensible resolution of our dispute with you and would like to come down to Charlottesville to meet with you, the general counsel, the President and the President of the Senate Faculty in a private and off-the-record session -- one that would fall within the protections of a settlement negotiation, the content of which would not be released to the public by either side.

I believe we have some common ground on protection of academic activities, and I believe we might find a way to draw a fuzzy line between that which must be protected and that which deserves none. This matter will go to court. Bad facts make bad law, so I would like to work with you to ensure we have clear examples for the court, ones that show the distinction between our different points of view. To make that happen, we need to share our points of view, which is the purpose of the meeting.

Please extend my request to those named and let me know when would be a convenient time to schedule a meeting. If you decide not to take up this opportunity, please let me know.

Respectfully,
David.

--

David W. Schnare, Esq. Ph.D.
The Law Center at ATI

--

David W. Schnare, Esq. Ph.D.
The Law Center at ATI

Kast, Richard (rck4p)

From: Dr. Schnare <schnareati@gmail.com>
Sent: Tuesday, May 31, 2011 8:49 AM
To: Kast, Richard (rck4p)
Subject: Proposed meeting

Rick:

I am angered and upset at the mostly irrational and surely uncivil discussion going on (especially on influencial internet blogs) with regard to the differences between UVA and GMU in handling recent FOIA requests, and ATI has done little to help in that regard. In contrast, and as the Director of our law center, I am committed to a civil and sensible resolution of our dispute with you and would like to come down to Charlottesville to meet with you, the general counsel, the President and the President of the Senate Faculty in a private and off-the-record session -- one that would fall within the protections of a settlement negotiation, the content of which would not be released to the public by either side.

I believe we have some common ground on protection of academic activities, and I believe we might find a way to draw a fuzzy line between that which must be protected and that which deserves none. This matter will go to court. Bad facts make bad law, so I would like to work with you to ensure we have clear examples for the court, ones that show the distinction between our different points of view. To make that happen, we need to share our points of view, which is the purpose of the meeting.

Please extend my request to those named and let me know when would be a convenient time to schedule a meeting. If you decide not to take up this opportunity, please let me know.

Respectfully,
David.

--

David W. Schnare, Esq. Ph.D.
The Law Center at ATI

EXHIBIT
tabbies
13

April 14, 2011

VIA Fax & E-Mail To:
434-924-3792
president.sullivan@Virginia.EDU

Teresa A. Sullivan, President
University of Virginia
Madison Hall
P.O. Box 400224
Charlottesville, VA 22904-4224

Dear President Sullivan:

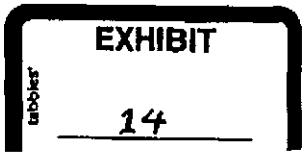
We understand that in January 2011, the American Tradition Institute Environmental Law Center, Virginia Delegate Robert Marshall, and one other Virginia resident affiliated with the Competitive Enterprise Institute filed a request with the University of Virginia under the state's Freedom of Information Act (FOIA). The request is substantially similar to the Civil Investigative Demands issued by Virginia Attorney General Kenneth Cuccinelli to the University of Virginia for a variety of records related to Professor Mann's research, and, like the CIDs, this request encompasses a broad array of materials produced and exchanged by Professor Mann in the course of his work as a professor and scholar working on topics related to global climate change.

Although this request was made several months ago, it appears to bear similarities to the FOIA requests recently served upon the University of Wisconsin-Madison and the labor studies departments at the University of Michigan, Michigan State University, and Wayne State University, seeking emails exchanged by professors in the course of their scholarly work.

As you may know, after careful consideration of the FOIA requests, including a review of the emails for any violations of Wisconsin law or university policy (of which it found none), the University of Wisconsin-Madison conducted a balancing test and concluded that it could appropriately exempt "private email exchanges among scholars that fall within the orbit of academic freedom and all that is entailed by it." As Chancellor Biddy Martin explained in her statement of April 1, 2011:

> Academic freedom is the freedom to pursue knowledge and develop lines of argument without fear of reprisal for controversial findings and without the premature disclosure of those ideas. . .
>
> When faculty members use email or any other medium to develop and share their thoughts with one another, they must be able to assume a right to the privacy of those exchanges, barring violations of state law or university policy. Having every exchange of ideas subject to public exposure puts academic freedom in peril and threatens the processes by which knowledge is created. The consequence for our state will be the loss of the most talented and creative faculty who will choose to leave for universities where collegial exchange and the development of ideas can be undertaken without fear of premature exposure or reprisal for unpopular positions.[1]

[1] Chancellor Martin's statement is available on the University of Wisconsin-Madison's website, at http://www.news.wisc.edu/19190. In addition, see http://www.news.wisc.edu/19196 for a letter from the office of the general counsel at the University of Wisconsin setting out the specific exemptions and the university's justification for invoking each.



The undersigned organizations, dedicated both to academic freedom and the exchange of scholarly and scientific ideas and to the critically important ideals of government transparency that are embodied by FOIA, urge the University of Virginia to follow Chancellor Martin's lead in balancing the interests in public disclosure against the public interest in academic freedom, which the University of Virginia has recognized in its faculty handbook as "an essential ingredient of an environment of academic excellence."

In addition, the Virginia FOIA statute expressly provides an exemption for "data, records or information of a proprietary nature produced or collected by or for faculty or staff of public institutions of higher education . . . in the conduct of or as a result of research on medical, scientific, technical or scholarly issues . . . where such data, records or information has not been publicly released, published, copyrighted or patented." Furthermore, the federal Family Educational Rights and Privacy Act compels the university to keep private communications related to students and implies similar protections for potential students. The undersigned organizations therefore also urge the University of Virginia to carefully consider whether the materials sought fall within these statutory exemptions.

As the United States Supreme Court said in the seminal case of *Sweezy v. New Hampshire*, "The essentiality of freedom in the community of American universities is almost self-evident. . . . To impose any straitjacket upon the intellectual leaders in our colleges and universities would imperil the future of our Nation. . . . Scholarship cannot flourish in an atmosphere of suspicion and distrust. Teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise our civilization will die."

Please do not hesitate to call upon us if we can be of assistance in your assessment of this FOIA request and your balancing of the twin values of academic freedom and government transparency.

Sincerely Yours,

Alliance for Justice
American Association of University Professors
American Civil Liberties Union of Virginia
Center for Inquiry
Climate Science Watch
Council of Environmental Deans and Directors
National Coalition Against Censorship
National Council for Science and the Environment
People For the American Way
Robert O'Neil, Director of the Thomas Jefferson Center for the Protection of Free Expression
The Ornithological Council
Union of Concerned Scientists

cc:
Richard Kast, Associate General Counsel
Carol Wood, Associate Vice President for Public Affairs

Lawrence Livermore National Laboratory

Dr. Benjamin D. Santer
Program for Climate Model Diagnosis and Intercomparison
PCMDI, Lawrence Livermore National Laboratory
P.O. Box 808, Mail Stop L-103
Livermore, CA 94550

TEL: (925) 423-3364
FAX: (925) 422-7675
email: santer1@llnl.gov

August 15, 2011

Dr. Teresa A. Sullivan, President
University of Virginia
Madison Hall
P.O. Box 400224
Charlottesville, VA 22904

Dear Dr. Sullivan,

I am extremely concerned by the ongoing efforts of the American Tradition Institute (ATI) to obtain access to personal email correspondence between Professor Mann and over 30 other climate scientists. I am one of those "other climate scientists", and so have direct personal interest in this issue.

Let me briefly introduce myself. I am a climate scientist at Lawrence Livermore National Laboratory in California. I have devoted my entire scientific career to the study of the nature and causes of climate change. In the mid-1990s, I was Convening Lead Author of Chapter 8 ("Detection of Climate Change and Attribution of Causes") of the Second Assessment Report of the Intergovernmental Panel on Climate Change (IPCC). After several years of evaluating the then-available scientific evidence, and after rigorous peer and Government reviews, Chapter 8 concluded that "the balance of evidence suggests a discernible human influence on global climate".

Subsequent to publication of the Second Assessment Report (SAR) in 1996, I spent several years defending the science behind the "discernible human influence" finding – and the process by which this finding had been reached. I also had to respond to public challenges to my integrity and the credibility of my own scientific research. Such challenges have continued to this date.

In 2001, the IPCC published its Third Assessment Report (TAR). The research conducted by Professor Mike Mann and his colleagues was prominently featured in the TAR. Professor Mann's work showed that the warming of Earth's surface during the second half of the 20th century was highly unusual in the context of our best scientific understanding of temperature fluctuations over

the last millennium. This was a key scientific advance relative to the IPCC Second Assessment Report.

Since 2001, Professor Mann has encountered the same challenges I experienced after publication of the IPCC's SAR. The "playbook" is all-too familiar.[1] It begins with attempts to attack the science. If the science is unshakable, the next step is to attack the integrity of the scientific messengers. The motives and integrity of the messengers are questioned. The final step in the "playbook" is overt intimidation. Political pressure is applied. Legal harassment begins. An entire community receives the clear and chilling message: "You could be next."

Professor Mann's research has been subjected to extraordinary scientific scrutiny. His findings are robust. Over a dozen research groups around the world have independently replicated the principal features of the Mann *et al.* "hockey stick" – the reconstruction of hemispheric- and global-scale temperature variations over the last 1-2 millennia. In 2006, after a thorough review of the scientific underpinning of the "hockey stick", the U.S. National Academy of Sciences confirmed that "...the Northern Hemisphere was warmer during the last few decades of the twentieth century than during any comparable period over the preceding millennium."[2]

The ATI's request to access Professor Mann's personal email correspondence is not based on any legitimate scientific concerns. As noted above, the quality and credibility of Professor Mann's research has already been affirmed by the highest scientific authority in the nation – the U.S. National Academy of Sciences.

Professor Mann has spent most of his career trying to advance our scientific understanding of the nature and causes of climate change. The ATI has no interest in advancing scientific understanding. They seek to sift through potentially thousands of emails, searching for any information that might be taken out of context. In the aftermath of "Climategate", we have seen many examples of how innocent phrases can be removed from their contextual framework, and are then publicly portrayed as examples of suspect behavior. We know how this playbook works.

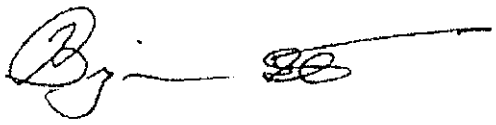
In summary, Professor Mann's only "transgression" is that he has performed cutting-edge research in the public and national interest. His research has given scientists and policymakers an invaluable long-term context for the late-20th century changes in Earth's surface temperature. Mike Mann has shown great courage and resilience under extreme pressure. I am proud to call him a colleague and a friend.

[1]This calculated strategy was recently described by Naomi Oreskes and Erik Conway in "*Merchants of Doubt*", a book which was nominated for the 2010 Los Angeles Times Book Prize in the "Science and Technology" category.

[2]National Research Council, 2006: Surface *Temperature Reconstructions for the Last 2,000 Years*. National Academies Press, Washington D.C., 196 pp.

I respectfully urge you to reconsider your decision to allow the ATI access to Professor Mann's email correspondence with scientific colleagues. I do not believe this decision is consistent with the University of Virginia's illustrious history as a strong proponent of academic freedom.

Sincerely yours,



Dr. Ben Santer

Member, U.S. National Academy of Sciences
Fellow, American Geophysical Union
Distinguished Scientist, U.S. Dept. of Energy Office of Biological and Environmental Research
John D. and Catherine T. MacArthur Fellow

THE UNIVERSITY OF QUEENSLAND
AUSTRALIA

Global Change Institute
Director
Professor Ove Hoegh-Guldberg

CRICOS PROVIDER NUMBER 00025B

August 13, 2011

Professor Teresa A. Sullivan
President, University of Virginia
Charlottesville VA 22904
United States of America

Re: The University of Virginia's agreement with the American Tradition Institute

Dear Professor Sullivan,

I am writing with extreme disquiet over the University of Virginia's agreement with the American Tradition Institute to allow exempt e-mail correspondence and other documents to be exposed to parties that have shown their clear intent to harass internationally respected scientists such as Professor Michael Mann.

Surely this is not the national or international reputation you should be pursuing for your university? Exposing your students and researchers to these conditions will ultimately destroy the ability for anyone at your university to indulge in free and frank correspondence. Apart from the serious deviation that this will cause from the core principles of academic freedom, I expect that your decision will have extremely negative consequences for your institution in terms of its ability to attract talented students and leading researchers.

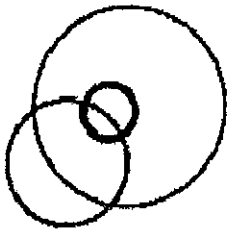
Professor Michael Mann is one of the world's leading climate scientists and it seems particularly objectionable that your university has given in to the unethical requests of an Institute that has shown its clear intent to prevent the science of climate change from being openly discussed and recognised. I would urge you to reconsider the steps you have taken or else suffer a major blow to your reputation.

Hopefully, you will see the serious error that you have made and will reverse your decision immediately. My colleagues and I will be watching your decision carefully, and look forward to your reply.

Sincerely,

Professor Ove Hoegh-Guldberg
Queensland's Smart State Premier's fellow

Global Change Institute
Gehrmann Laboratories (60)
The University of Queensland
Brisbane QLD 4072 Australia
T +61 7 3365 1156
F +61 7 3365 4755
E oveh@uq.edu.au
W gci.uq.edu.au



LAMONT-DOHERTY
EARTH OBSERVATORY
THE EARTH INSTITUTE AT COLUMBIA UNIVERSITY

30 August 2011

To: Dr. Teresa Sullivan, President
University of Virginia
Madison Hall
P.O. Box 400224
Charlottesville, VA 22904

Dear Dr. Sullivan,

I am writing due to my great concern regarding the ongoing attempts of the American Tradition Institute (ATI) to obtain access to the personal email letters between Dr. Michael E. Mann and other climate scientists, including myself.

My research over the past three decades includes the use of tree-ring reconstructions for the past millennium to infer past temperature trends and the magnitude of recent anthropogenic impacts on climate. I am a paleoclimatologist and Associate Director at the Lamont-Doherty Earth Observatory, part of Columbia University in New York.

These are personal emails that are not relevant to valid scientific concerns, and will likely be taken out of context. Please reconsider your decision to allow the ATI access to these personal emails.

Thank you very much for your consideration.

Rosanne D'Arrigo

Rosanne D'Arrigo,

Senior Research Scientist, TRL-LDEO
Associate Director, Biology and Paleo-Environment Division, LDEO
Tree-Ring Laboratory, Lamont-Doherty Earth Observatory
Palisades, NY 10964

NCAR

National Center for Atmospheric Research
Climate and Global Dynamics Division
Climate Analysis Section

Kevin E. Trenberth
trenbert@ucar.edu, http://www.cgd.ucar.edu/cas/trenbert.html
P. O. Box 3000 • Boulder, CO 80301
Tel: 303-497-1318 • Fax: 303-497-1333

August 28, 2011

Dr. Teresa A. Sullivan, President
University of Virginia
Madison Hall
P.O. Box 400224
Charlottesville, VA 22904

Dear Dr. Sullivan,

Along with other scientists, I am very concerned by the ongoing efforts of the American Tradition Institute (ATI) to obtain access to personal email correspondence between Professor Mann and over 30 other climate scientists. As one of those "other climate scientists", I have a direct personal interest in this issue.

I am a distinguished senior scientist at NCAR. I have been extensively involved into climate research; I have been prominent in the scientific assessments of the Intergovernmental Panel on Climate Change (IPCC), and a leader of the World Climate Research Programme. I currently chair the GEWEX (Global Energy and Water Cycle Experiment) Scientific Steering Group, for example. You can find a lot more about my work and credentials on my web site, listed above. I have coauthored a couple of articles with Dr. Mann. I was a Coordinating Lead Author of Chapter 3 of the last IPCC WG I report with Professor Phil. Jones from the Climatic Research Unit of the University of East Anglia. It was Jones' email that was hacked under what is sometimes derogatorily called "climategate" in which Dr. Mann and my emails were also featured. The story of how one of my emails went viral and was distorted is given at http://www.cgd.ucar.edu/cas/Trenberth/statement.html .

The moral is that even innocent emails can be taken out of context and distorted. This has also happened with Dr. Mann in an even more pronounced way – not because he did anything wrong but simply because he did high profile and important research, that has implications for political actions. Several investigations have cleared Dr. Mann in spite of intense scrutiny.

I respectfully urge you to reconsider your decision to allow the ATI access to Professor Mann's email correspondence with me and other scientific colleagues. I do not believe this decision is consistent with the University of Virginia's very distinguished history as a strong proponent of academic freedom.

Sincerely



Kevin E Trenberth

Fellow American Association Advancement of Science,
Fellow American Geophysical Union
Fellow American Meteorological Society
Honorary. Fellow Royal Society New Zealand.

The National Center for Atmospheric Research is operated by the University Corporation for Atmospheric Research under sponsorship of the National Science Foundation.

UNIVERSITY of MASSACHUSETTS
at Amherst
Morrill Science Center
611, North Pleasant Street
AMHERST, MA 01003-9297

Prof. Raymond S. Bradley

DEPARTMENT OF GEOSCIENCES

Tel: 413.545.0745
Fax: 413.545.1200

rbradley@geo.umass.edu

August 28th, 2011

Dr. Teresa A. Sullivan, President
University of Virginia
Madison Hall
P.O. Box 400224
Charlottesville, VA 22904

Dear President Sullivan,

I am writing to express my deep concerns about the request of the American Tradition Institute (ATI) to obtain personal email correspondence between Professor Michael Mann and other climate scientists. As I have worked with Mike Mann for many years, following his postdoc research here at the University of Massachusetts, no doubt many of these emails include correspondence to and from me. I do not know what the legal basis is for their request, but I certainly do not give my permission for the release of any email correspondence that involves me. I consider this a breach of confidentiality and an attack on academic freedom. I should note that this request is not unique. Similar efforts have been made by other politically-motivated organisations, to (*inter alia*) the University of Massachusetts and the University of Arizona. These requests were resisted. Given that this strategy of dredging through email for anything that might be taken out of context and used for political purposes could develop into a much larger problem, with enormous implications for all aspects of academic freedom, I urge you to forcefully reject the ATI request. I feel sure that the legal counsels of my institution and those of other Universities would stand together with the University of Virginia in opposing these intrusive requests.

I am sure that you are aware of the on-going harassment of climate scientists (most prominently Mike Mann) by a large number of individuals and organisations such as the ATI. This is part of a larger campaign to confuse the public about the important issues of climate change, and intimidate climate scientists who have been at the cutting edge of this research. Mike Mann is one of those who has been singled out for particular abuse. I have recently documented this deliberate strategy in my book, "**Global Warming and Political Intimidation**" (University of Massachusetts Press, 2011). The ATI request follows the same playbook that was applied to Ben Santer, Phil Jones and other leading climatologists.

I end my book by quoting from the argument made by your University when it filed a response to the suit brought by Virginia Attorney-General Cuccinelli—another example of political intimidation. In rejecting his request you stated,

"Academic freedom is essential to the mission of our Nation's institutions of higher learning and a core First Amendment concern. As Thomas Jefferson intended, the University of Virginia has a long and proud tradition of embracing the "illimitable freedom of the human mind" by fully endorsing and supporting faculty research and scholarly pursuits. Our Nation also has a long and proud tradition of limited government framed by enumerated powers, which Jefferson ardently believed was necessary for a civil society to endure.....Unfettered debate and the expression of conflicting ideas without fear of reprisal are the cornerstones of academic freedom; they consequently are carefully guarded First Amendment concerns."

Indeed, ***"the unfettered debate and the expression of conflicting ideas without fear of reprisal are the cornerstones of academic freedom".*** The ATI request is an assault on these values and I urge you to reject their request and stand firm in defense of the free exchange of ideas without the fear of harassment such as this.

Sincerely,



Raymond S. Bradley
Distinguished Professor
Director, Climate System Research Center

Dr. Eugene R. Wahl
Paleoclimatology Branch/World Data
Center for Paleoclimatology
NOAA's National Climatic Data Center
325 Broadway, Code E/CC23
Boulder, CO 80305-3328

Dr. Teresa A. Sullivan, President
University of Virginia
Madison Hall
P.O. Box 400224
Charlottesville, VA 22904

September 18, 2011

Dear Dr. Sullivan,

Please allow me to introduce myself. I am a scientist specializing in paleoclimatology, the study of past climates. I write in regard to my familiarity with, and direct relation to, attempts by the American Tradition Institute (ATI) to obtain the personal email correspondence of Dr. Michael Mann with a group of over 40 scientists and other individuals, of whom I am one.

I would like to offer three perspectives in order to help contextualize the situation, and in the process to make a plea for you to carefully consider the decisions you may be required to make in relation to allowing ATI access to the messages and other materials in question -- to help maintain the long tradition of academic freedom at the University of Virginia.

First, I have read the letter on this matter from Dr. Benjamin Santer of Lawrence Livermore National Laboratory, and concur with it. In particular, I believe Dr. Santer has clearly and succinctly laid out the strategic nature of the attacks both he and Dr. Mann have undergone for their path-breaking work and results that have been prominently featured in the Intergovernmental Panel on Climate Change (IPCC) Second and Third Assessment Reports. As Dr. Santer points out, development of climate science is not furthered by the ATI request, which in fact has a clear negative impact on the scientific community, at the very least in terms of engendering fear. Dr. Santer mentions the 2006 report by the National Academy of Science that affirmed the quality and credibility of Dr. Mann's work. Subsequent to his letter, the Inspector General of the National Science Foundation found no basis in relation to a variety of questions related to Dr. Mann and his work while he has been at the Pennsylvania State University, after his tenure with the University of Virginia.

Second, I would like to emphasize a point that often goes neglected in relation to Dr. Mann's scientific contributions. This is the fact that Dr. Mann's research focus has largely targeted more fundamental questions than global and hemispheric average temperatures. In particular, Dr. Mann has done path-breaking work in the development of what are termed "climate field reconstructions" (CFRs): understandings of past climate that allow systematic comparison of the spatial expression of climate in one part of the planet with that in other parts. CFR differs fundamentally from attempts to make compilations of past climate patterns from "point source"

data, which are developed at specific locations without direct connection to how this information relates to larger-scale patterns. CFR has been an important breakthrough in paleoclimate science, and Dr. Mann has been one of the key leaders in its development, including while he was at the University of Virginia. Even more fundamentally, Dr. Mann has been at the forefront of applying CFR results to critical questions about centennial- and millennial-scale climate variability over the past 2000 years: in particular, concerning the behavior of the El Niño-La Niña/Southern Oscillation (ENSO) system in the tropical Pacific and Indian Ocean regions, whose variability has global-scale impacts.

Third, I would like to mention that I was directly involved in a thorough-going evaluation of the early CFR work of Dr. Mann and his colleagues that lay behind the Northern Hemisphere temperature reconstruction which was prominently cited in the IPCC Third Assessment Report. I and my colleague, Dr. Caspar Ammann, looked carefully into a set of methodological criticisms published regarding Dr. Mann's and his colleagues' work. We found these criticisms to be largely without basis, and identified that the components we found to be potentially meaningful had only very small impact, and no meaningful effect, on the results. In conclusion, we found "no evidence for removing the MBH [Mann and co-authors Raymond Bradley and Malcolm Hughes] Northern Hemisphere temperature reconstruction from the list of important climate reconstructions of the past six centuries, on the basis of alleged "flaws" in its use of proxy data or underlying methodology." [Climatic Change (2007) 85: 33–69] To my understanding, it is primarily on the basis of this work that I am included in the ATI list, even though it was still only in the early stages of editor's review at the time Dr. Mann left the University of Virginia. It is for this reason that I find Dr. Santer's analysis that leads to the sentence, "You could be next," consistent with my own experience.

In closing, I urge you to consider this matter within the larger context of academic freedom, and freedom of thought and expression generally, which are critical to advancing scientific knowledge and to making the best use of that knowledge for the benefit of society. I do not believe the May 24, 2011 agreement between the University and ATI properly emphasizes this crucial privacy interest in its relation to the equally important need for accountability of public institutions and employees.

Thank you very much for consideration of these perspectives, which I write with deep respect for your role as President of the University of Virginia.

Sincerely,

Eugene R. Wahl

Dr. Eugene R. Wahl

The perspectives expressed in this letter are mine as an individual, and do not necessarily represent those of the National Oceanic and Atmospheric Administration (NOAA).

Kast, Richard (rck4p)

From: pm <citizenschallenge@gmail.com>
Sent: Sunday, August 21, 2011 2:06 PM
To: rck4p@virginia.edu
Cc: president.sullivan@Virginia.EDU; fls4f@virginia.edu
Subject: Open letter: regarding the ATI witch hunt targeting Michael Mann

Mr. Kast,
Your agreement with American Tradition Institute and the University is most disappointing. I would be nice to see you do more to protect academic freedom in the face of a wanton political witch hunt that has learning about our climate as it's lowest priority.

Please don't roll over for them.

With disappointment and despair,
Sincerely,

Peter Miesler

~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~

Open Letter to
Teresa A. Sullivan, President
University of Virginia
Madison Hall
president.sullivan@Virginia.EDU

Honorable President Sullivan,
I'm just a little guy watching this cynical attack on academia that has been playing out between AG Cuccinelli and now the American Tradition Institute vs. the University of Virginia from the sidelines.

You certainly know the facts better than I do so I won't presume to add anything to that. Still considering these sorts of attacks on science are happening with greater frequency I feel compelled to share some frank personal observations regarding the important precedent you will be setting as you move forward.

Have you given due consideration to the type, that is motivation, of the desired search being attempted? What about Americans, including scientists, historic respect for personal freedom and privacy? Isn't that worth defending with vigor?

Academics are thinkers, most are also gregarious, that is, with those who are intellectually compatible. Personal discussions and musing...
tossing out wild conjectures... investigating problems from every angle... playing devil's advocate... sharing information and mistakes... chewing on and digesting every scrap of information they come across. Then they go to work following established protocols in their scientific field and publications.

Like most motivated self-aware individuals they do their best work possible. Their goals are accuracy in their observations, leading to an educated realistic understanding, striving to continue filling in missing details and building upon their current knowledge.



EXHIBIT
tabbies
15
~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~

Moreover there are many of them, always looking over each others shoulders, checking and cross checking, looking for and following new leads, or gaps, or perceived mistakes in others work. Given the global community of competing scientists there are many checks and balances at work that despite all the blogosphere/media trash-talk simply have not been shown to be broken.

It is telling that the Cuccinelli, ATI, et al. have presented no actual indication of actual fraud. They simply have faith that if they dig deep enough they will find something... anything, to help them "nail" Mann. What's right about that?

May I ask: Why are personal emails and working notes suddenly important for discovery regarding the voracity of the published global temperature records? Specially considering the many varied independent studies that support Mann et al's basic temperature reconstruction with a high degree of consistency.

It's this flaw in ATI/Cuccinelli's logic that they should be pressed on. What are they trying to find that is relevant to the scientific debate? They have produced nothing, instead resembling bullies who resent the scientists work thus resort to witch-hunts for information that has no bearing on science, but might offer some useful dirt anyways.

Why would you consent to such an unwarranted intrusion at your university?

You represent the University of Virginia, I like to imagine a proud university, a bastion of thought, intellectual freedom, and unfettered learning, yet sounds like you are getting ready to allow obviously politically dedicated folks... mind you, folks with a passionate sense of mission for stopping any Global Warming awareness, into the closets and dresser drawers of anyone whom they have a grudge against? What's up with that?

Where is the defense of scientific integrity in that?

Sincerely,

Peter Miesler
Durango, Colorado
citizenschallenge@gmail.com
http://citizenschallenge.blogspot.com

UNIVERSITY of VIRGINIA
OFFICE OF THE PRESIDENT

April 21, 2011

American Association of University Professors
1133 Nineteenth Street, NW
Suite 200
Washington, D.C. 20036-3655

Dear Messrs. and Mmes.:

This will respond to your letter of April 14, 2011, submitted on behalf not just of the AAUP, but also the Alliance for Justice, the ACLU of Virginia, the Center for Inquiry, Climate Science Watch, the Council of Environmental Deans and Directors, the National Coalition Against Censorship, the National Council for Science and the Environment, People for the American Way, Robert O'Neil as Director of the Thomas Jefferson Center for the Protection of Free Expression, the Ornithological Council, and the Union of Concerned Scientists.

As you know, as evidenced by its opposition to the Civil Investigative Demands issued by Virginia's Attorney General, the University of Virginia is quite conscious of the academic freedom interests about which you express concern. Academic freedom issues are certainly part of the analytic framework the University's Office of General Counsel is bringing to its review of documents potentially responsive to the request about which you inquire. It is my understanding that all available exemptions in Virginia's Freedom of Information Act will be claimed in our response. We are also keenly aware of the constraints imposed on disclosure by the Family Educational Rights and Privacy Act, and other provisions of federal and state law to which Virginia's Freedom of Information Act is explicitly subject.

While the University is, of course, committed to complying with the requirements of law, I wish to reassure you that this commitment will be carried out to the fullest extent possible consistent with the interests of faculty in academic freedom and scholarship.

Very truly yours,

Teresa A. Sullivan

Teresa A. Sullivan
President

TAS:rk
cc: Mr. Richard Kast
Ms. Carol Wood

Madison Hall
Post Office Box 400224 • Charlottesville, VA 22904-4224
Phone: 434-924-3337 • Fax: 434-924-3792

EXHIBIT
16

'Hockey Stick' Creator Michael Mann Seeks Court's Help to Ensure No Inquiry, No 'Exoneration'

Published September 6, 2011 at 11:40 am

Dr. Michael Mann, lead author of the discredited "hockey stick" graph that was once hailed by the UN Intergovernmental Panel on Climate Change as the "smoking gun" of the catastrophic man-made global warming theory, has asked to intervene in American Tradition Institute's Freedom of Information Act lawsuit that seeks certain records produced by Mann and others while he was at the University of Virginia, for the purpose of keeping them hidden from the taxpayer.



Latest News

ATI has produced a three-part video series that explains why
Colorado. Part One explains why wind power is not clean or
unconstitutional; Part Three explains what the possible outco

What's Happening Now
ATI Video Channel

EXHIBIT
17

UNIVERSITY of VIRGINIA
OFFICE of the GENERAL COUNSEL

Via Electronic Mail

August 31, 2011

David W. Schnare, Esq.
Christopher Horner, Esq.
The Law Center at the American Tradition Institute
2020 Pennsylvania Avenue, N.W. # 186
Washington, D.C. 20006

RE: The American Tradition Institute, *et al. v.*
The Rector and Visitors of the University of Virginia
Civil Docket No. CL 11-3236

Dear Dr. Schnare and Mr. Horner:

You will recall that there were expressions of concern after the entry of the Order on Protection of Documents ("Protective Order"), and the corollary Agreements Concerning Confidentiality ("Confidentiality Orders") signed by you in this case, that your interests as parties to this litigation would outweigh your ethical duties as counsel. I raised these concerns at the time and you each assured me that you were fully aware of the duties imposed by the Confidentiality Orders and would rigidly comply with them. A new concern has now arisen that I would appreciate your responding to.

This concern focuses on the meaning of Section C (2) of the Protective Order which would permit disclosure of documents shared with you as counsel for the limited purposes set forth in the order to "[a]ny other court of competent jurisdiction pursuant to lawful process or order." The specific concern focuses on the possibility that some other entity, whether public or private, might issue or seek to issue a civil investigative demand ("CID"), subpoena, or other demand or request for the documents held pursuant to the Protective Order. It is clear that such a CID, subpoena, or other demand or request would not come within the language of this exception to the Protective Order. To reassure those who have raised this issue, however, I would appreciate each of you signing and returning a copy of this letter to me to indicate that: (1) you agree that the language of the Protective Order would not enable disclosure of these confidential materials or information pertaining thereto pursuant to a CID, subpoena, or other demand or request not directly issued by a court of competent jurisdiction, and (2) should you receive such a CID, subpoena, or other demand or request you would immediately give notice to us and would take no action to comply until we had a reasonable opportunity to challenge the CID, subpoena, or other demand or request as not in compliance with the Protective Order.

Madison Hall • P.O. Box 400225
Charlottesville, VA 22904-4225
Phone: 434-924-3586

EXHIBIT
tabbies
18

I would appreciate receiving your responses no later than Friday, September 2nd. Thank you for your consideration of this request.

Sincerely,

R. C. Kast

Richard C. Kast
Associate General Counsel and
Special Assistant Attorney General

I agree with the above:

David W. Schnare

Date: _____

Christopher Horner

Date: _____

Environmental Law Center
at the American Tradition Institute

September 2, 2011

Via Electronic Mail

Richard C. Kast
Office of the General Counsel
University of Virginia
Madison Hall – P.O. Box 400225
Charlottesville, VA 22904-4225

Re: ATI v. UVA – CL 11-3236

Dear Mr. Kast:

We are in receipt of your letter of August 31, 2011, to which this is a response. In your letter you refer to Section C(2) of the Protective Order issued under the subject litigation, raising a concern that some other entity, whether public or private, might issue or seek to issue a civil investigative demand ("CID"), subpoena, or other demand or request for the documents held pursuant to the Protective Order.

As you are fully aware, Section C of the Protective Order authorizes the University of Virginia ("UVA") to disclose exempt information to two of ATI's counsel, in this case, me and Mr. Horner, and the scheduling order requires UVA to produce the documents to us on a date certain. Section C of the Protective Order also authorizes disclosure of exempt information "only in connection with this action" and "may be disclosed only as necessary in connection with this action to the individuals set forth below", which includes any other court of competent jurisdiction pursuant to lawful process or order.

Frankly, we are perplexed by your concern. The language in the protective order is extremely clear. It specifically disallows release of the exempt information to anyone, including the Attorney General and any court of competent jurisdiction, unless the release is "in connection with this action." The only courts of competent jurisdiction contemplated under the Protective Order and in connection with this action would be the two Virginia appellate courts that might be asked to review the decisions of lower courts on this matter. As UVA is a party to this matter, it would have notice of any such disclosure long before it was made. Further, as required under the Protective Order, Section D, the parties have a duty to use as little exempt information as possible in any pleading, motion, exhibit or other paper filed with the court and any such exempt information must be filed under seal, thus providing still another layer of protection to the exempt information, even to courts of competent jurisdiction beyond the Circuit Court.

We are perplexed because we are confident you have already advised your clients that if the Attorney General issues a CID to us, or we receive some other demand for the exempt documents under a lawful process or order from any court other that the one before which the

EXHIBIT
19

parties now stand, Mr. Horner and I have no option but to refuse the disclose the exempt information, making reference to the Protective Order.

Mr. Horner and I have no duty or need to make any further attestation regarding this matter. Your demand is not merely unnecessary, it continues a pattern of behavior that has on some occasions expressly and, on others, impliedly called our professionalism and honor into question. That notwithstanding, however, if you insist on still another demonstration of our sincerity to act in a continuingly professional manner, we will provide that. First, however, we require you to openly admit in writing what you have repeatedly admitted in personal conversations and what you have never denied in public or in court, to wit, that you have advised those who reviewed the documents to "broadly apply" the exemptions available under the Virginia Freedom of Information Act. Once we receive that admission, Mr. Horner and I will be happy provide additional attestation that we have every intent to follow the Protective Order to the letter.

Sincerely,



David W. Schnare
Director
The Environmental Law Center

UNIVERSITY of VIRGINIA

OFFICE of the GENERAL COUNSEL

Via Electronic mail
September 20, 2011

David W. Schnare, Esq.
The Law Center at the American Tradition Institute
2020 Pennsylvania Avenue, N.W. # 186
Washington, D.C. 20006

Re: The American Tradition Institute v The Rector and Visitors of the University of Virginia Civil Action No. CL-11-3236

Dear David:

I am writing to follow up on the email I sent a week ago suggesting that we consider a change in the protective order and process for selecting samples to be used in our briefing of the relevant FOIA exclusions in the present case. Now that the Court has stayed delivery of the documents the University believes to be exempt pending the hearing on November 1st, it seemed timely for me to raise this issue with you again in an attempt to resolve the matter. We do believe the issues raised by Dr. Mann and others in the scientific and scholarly community are significant and merit the Court's consideration. Therefore, we plan to move to reopen certain aspects of the Order as was specifically provided for in Section G ("Right to Seek Modification") if we are unable to reach an accommodation through informal collaboration with you.

The key issues that have been raised center on the dual roles that you and Chris play as both lawyers and founding members of ATI, and the fact that the very documents we believe are not subject to disclosure will nonetheless be provided to you in their entirety in your role as lawyers. No one need contend that either of you would violate the order to comprehend the concern that the order affords you access to emails from members of our faculty and researchers around the world that under our view of the case are clearly entitled to be protected as confidential and private records under the Virginia FOIA. It is also worth noting that Michael Mann and many other scientists have communicated to us their belief that the disclosure of the exempt documents to you and Chris pursuant to the protective order seriously undercuts the entire purpose of Va. Code § 2.2-3705.4 (4) and violates both his privacy interests and the privacy interests of all of the other scientists mentioned in those documents.

In our phone call and in my email, we asked you to consider a potential alternative that we think would be both fair and practical. I want to summarize that suggestion more fully, especially as our own process of review over the last three months has shown us the magnitude of the task that the present order will entail for both parties. Although there are many, many duplicates, the total number of documents we have identified as exempt are over twelve

Madison Hall • P.O. Box 400225
Charlottesville, VA 22904-4225
Phone: 434-924-3586

EXHIBIT
tabbies
20

thousand. Most of these documents are multi-page. My rough estimate is that we are talking about 40,000+ "pages" of textual material.

Our proposal would be to allow us to work through these records and identify an example or two of each type/major topic of exchange found there that we believe to be exempt. We propose to remove personal identifying information from the message, but leave all other material intact to give you a robust understanding of the context and specific content. We would describe our understanding of the message categories (e.g. "email exchange relating to the drafting and planning of a grant proposal;" or, "email exchange relating to manuscript submitted to a scholarly journal;" or, "email exchange discussing response to climate science skeptics;" or "email exchange regarding topics to be debated at scientific meeting"). You could review the list of categories and the samples and suggest other topics or issues you wanted to see a sample exchange on if such exists. We would represent to you as attorneys that the examples were a fair and complete set enabling both parties to make vigorous arguments about the status of such exchanges under the Virginia FOIA.

It would also be possible to build into this process an independent review by a neutral person or magistrate appointed by the Court if you were concerned that Rick and I should not decide on our own whether the examples we offered were comprehensive. That individual could have access to the entire document pool, enabling them to verify (probably through random sampling) that the examples you had received and the categories described were appropriate. And of course, the Court would also be able to review anything it wanted to in camera. It is clear that the Virginia Supreme Court would expect a record containing all of the contested materials under the *Virginian-Pilot* and *Bland* decisions.

As we suggested, this is ultimately an appellate case testing two very different theories about what rights are protected (or not) under the Virginia FOIA. It is hard for us to conceive why anyone would need or want to sort through 40,000 duplicative pages to make compelling arguments on what are finite substantive appellate issues.

Although it is not recent, in searching for possible alternative mechanisms to cull documents for the purposes of argumentation and appellate review in freedom of information cases, we found *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973) and its sequelae most instructive. Vaughn involves a protracted battle under the Federal Freedom of Information Act in which the D.C. Circuit expressed considerable sympathy to the needs of plaintiffs in your position:

> In light of this overwhelming emphasis upon disclosure, it is anomalous but obviously inevitable that the party with the greatest interest in obtaining disclosure is at a loss to argue with desirable legal precision for the revelation of the concealed information. Obviously the party seeking disclosure cannot know the precise contents of the documents sought; secret information is, by definition, unknown to the party seeking disclosure. In many, if not most, disputes under the FOIA, resolution centers around the factual nature, the statutory category, of the information sought.

> In a very real sense, only one side to the controversy (the side opposing disclosure) is in a position confidently to make statements categorizing information, and this case provides a classic example of such a situation. Here the Government contends that the documents contain information of a personal nature the disclosure of which would constitute an invasion of certain individuals' privacy. This factual characterization may or may not be accurate. It is clear, however, that appellant cannot state that, as a matter of his knowledge, this characterization is untrue. Neither can he determine if the personal items, assuming they exist, are so inextricably bound up in the bulk of the documents that they cannot be separated out. The best appellant can do is to argue that the exception is very narrow and plead that the general nature of the documents sought make it unlikely that they contain such personal information.

The court then observed:

> [T]he trial court, as the trier of fact, may and often does examine the document in camera to determine whether the Government has properly characterized the information as exempt. Such an examination, however, may be very burdensome, and is necessarily conducted without benefit of criticism and illumination by a party with the actual interest in forcing disclosure. In theory, it is possible that a trial court could examine a document in sufficient depth to test the accuracy of a government characterization, particularly where the information is not extensive. But where the documents in issue constitute hundreds or even thousands of pages, it is unreasonable to expect a trial judge to do as thorough a job of illumination and characterization as would a party interested in the case.

The court went on to order a "system of itemizing and indexing" of all the documents and remanded the case to the district court for the government to implement the process set forth in the opinion.

On remand, however, the government told the judge that given the numbers of documents involved, compliance with the indexing procedures recommended by the Court of Appeals would take "10,257.1 man-hours or 4.93 man-years, at a total cost to the Government of $96,176.00. Accordingly, the district court held, a "realistic solution to the dilemma posed by the Court of Appeals . . . became imperative." *Vaughn v Rosen*, 383 F. Supp. 1049, 1052 (D.D.C. 1974).

The solution arrived at, by agreement between the parties, was the submission by the government of nine representative samples of the information sought with identifying details deleted. The parties agreed that the court's decision on the nine representative samples would be determinative as to all of the documents sought. I think it is worth mentioning that the number of documents described in this case was approximately "2,448, filling seventeen standard-size, five-drawer cabinets;" far less than the document count in our present situation. Although my hunch is that the per-document page count was likely more in *Vaughn*, the fact that the plaintiff (and the court) agreed to a very small representative selection given the magnitude of the page count involved seems quite applicable here.

I believe we all agree that our case presents significant and unique questions of substantive and ultimately, appellate law. Clear examples of the types of communications in contest would be very easy to identify from the thousands of emails identified by us as exempt. We hope you would be willing to discuss this alternative solution as I think it would save all of us a considerable amount of time better spent arguing these genuinely important issues on their merits.

Sincerely,

Madelyn Wessel
Associate General Counsel

cc: Peter Fontaine, Esq.

Kast, Richard (rck4p)

From: Dr. Schnare <schnareati@gmail.com>
Sent: Thursday, September 29, 2011 12:54 PM
To: Wessel, Madelyn (mfw2y)
Cc: Kast, Richard (rck4p)
Subject: Re: Follow-up Conversation

Madelyn:

Frankly, we've had a particularly upsetting family crisis this past week and I am having a very hard time concentrating on those things beyond the family that demand my instant attention. Among other things, tomorrow is my last day as an employee of the U.S. EPA, and I've had to close out a large caseload as well as deal with all manner of federal records matters.

Let's find time to talk next week. Suffice it to say, I've been intimately familiar with Vaughn for many years. As Rick may recall, I asked him quite some time ago whether he would be willing to prepare a Vaughn log. He declined. In any case, I understand what you want to do and I have given thought as to how to do it as it is not unlike what we would have had to do, although we would have examined every email and surely have identified every one we believed demanded exclusion - more or less the reverse of your approach.

Let me review your proposal. As you might imagine, my time next week (and forever thereafter, one hopes) will be my own. Propose a day and time.

David.

On Thu, Sep 29, 2011 at 12:41 PM, Wessel, Madelyn (mfw2y) <mfw2y@eservices.virginia.edu> wrote:

Dear David:

Do you have time in the near future to discuss the proposal I sent you last week regarding an alternative review/culling process for the documents we consider exempt? Rick and I both have time at the end of today, if you happen to be available, or on Monday or Tuesday.

Let us know your availability.

Madelyn

Madelyn Wessel

Associate General Counsel

EXHIBIT
tabbies
21

University of Virginia

P.O. Box 400114

Charlottesville, VA 22904-4114

Tel: 434-982-2941

FAX: 434-924-1431

wessel@virginia.edu

--

David W. Schnare, Esq. Ph.D.
Director
The Environmental Law Center at ATI

Kast, Richard (rck4p)

From: Kast, Richard (rck4p)
Sent: Thursday, September 29, 2011 2:20 PM
To: 'Dr. Schnare'; Wessel, Madelyn (mfw2y)
Subject: RE: Follow-up Conversation

David:

We are both sorry to hear about your family crisis and hope things are resolving for your family.

On the *Vaughn* issue, what I rejected was, of course, the log/indexing approach that was found to be wholly unrealistic and unworkable on remand due to the volume of documents involved, which we are also facing here. What we are proposing is inspired by the approach that was actually taken and worked in *Vaughn*.

Finally, I must say that I am surprised and frankly disturbed by your revelation that you are just now leaving the EPA. You told me when we first met before the initial court appearance in Prince William County Circuit Court on May 24th that you had formerly been with the EPA and were then, and had been for a while, a private, public-interest lawyer. We had recently heard that perhaps you were still with the EPA and wanted to discuss this issue with you as it was so different from what you had told me and was a cause of concern to us on many levels. We should discuss this further when we talk. Madelyn and I are free at the following times next week and I hope one will work for you: Mon., 10/3 11:30-3:00 (11:30 would be ideal); Tue., 10/4 3:00-4:00; Wed., 10/5 9:00-12:00.

- R

From: Dr. Schnare [mailto:schnareati@gmail.com]
Sent: Thursday, September 29, 2011 12:54 PM
To: Wessel, Madelyn (mfw2y)
Cc: Kast, Richard (rck4p)
Subject: Re: Follow-up Conversation

Madelyn:

Frankly, we've had a particularly upsetting family crisis this past week and I am having a very hard time concentrating on those things beyond the family that demand my instant attention. Among other things, tomorrow is my last day as an employee of the U.S. EPA, and I've had to close out a large caseload as well as deal with all manner of federal records matters.

Let's find time to talk next week. Suffice it to say, I've been intimately familiar with Vaughn for many years. As Rick may recall, I asked him quite some time ago whether he would be willing to prepare a Vaughn log. He declined. In any case, I understand what you want to do and I have given thought as to how to do it as it is not unlike what we would have had to do, although we would have examined every email and surely have identified every one we believed demanded exclusion - more or less the reverse of your approach.

Let me review your proposal. As you might imagine, my time next week (and forever thereafter, one hopes) will be my own. Propose a day and time.

David.

EXHIBIT
tabbies
22

On Thu, Sep 29, 2011 at 12:41 PM, Wessel, Madelyn (mfw2y) <mfw2y@eservices.virginia.edu> wrote:

Dear David:

..

Do you have time in the near future to discuss the proposal I sent you last week regarding an alternative review/culling process for the documents we consider exempt? Rick and I both have time at the end of today, if you happen to be available, or on Monday or Tuesday.

Let us know your availability.

Madelyn

Madelyn Wessel

Associate General Counsel

University of Virginia

P.O. Box 400114

Charlottesville, VA 22904-4114

Tel: 434-982-2941

FAX: 434-924-1431

wessel@virginia.edu

--

David W. Schnare, Esq. Ph.D.
Director
The Environmental Law Center at ATI

Kast, Richard (rck4p)

From: Dr. Schnare <schnareati@gmail.com>
Sent: Thursday, September 29, 2011 2:32 PM
To: Kast, Richard (rck4p)
Cc: Wessel, Madelyn (mfw2y)
Subject: Re: Follow-up Conversation

Rick:

I have had authority from the agency to do pro bono public interest law for over 5 years now. That is what I represented to you. I never mention my EPA duties when I am doing non-EPA work and I have never used EPA facilities for private work. Whenever we have been together, I have taken leave. The two lives are completely separate. I don't see how that poses any problem, but if you think it is worth discussion, please explain.

As for the phonecall, let's do it at 11:30 Monday as that appears to be the time you most would like to do this.

David.

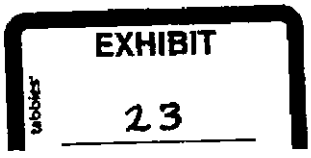
On Thu, Sep 29, 2011 at 2:19 PM, Kast, Richard (rck4p) <rck4p@eservices.virginia.edu> wrote:

David:

We are both sorry to hear about your family crisis and hope things are resolving for your family.

On the *Vaughn* issue, what I rejected was, of course, the log/indexing approach that was found to be wholly unrealistic and unworkable on remand due to the volume of documents involved, which we are also facing here. What we are proposing is inspired by the approach that was actually taken and worked in *Vaughn*.

Finally, I must say that I am surprised and frankly disturbed by your revelation that you are just now leaving the EPA. You told me when we first met before the initial court appearance in Prince William County Circuit Court on May 24th that you had formerly been with the EPA and were then, and had been for a while, a private, public-interest lawyer. We had recently heard that perhaps you were still with the EPA and wanted to discuss this issue with you as it was so different from what you had told me and was a cause of concern to us on many levels. We should discuss this further when we talk. Madelyn and I are free at the following times next week and I hope one will work for you: Mon., 10/3 11:30-3:00 (11:30 would be ideal); Tue., 10/4 3:00-4:00; Wed., 10/5 9:00-12:00.



In The Matter Of:

THE AMERICAN TRADITION INSTITUTE v.

RECTOR AND VISITORS

Court

September 16, 2011

REPORTING SERVICES

8959 CENTER STREET

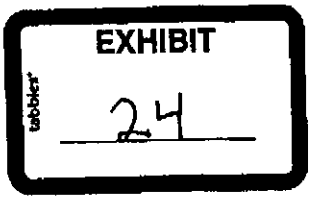
MANASSAS, VIRGINIA 20110

(703) 331-0212

INFO@INABNETREPORTING.COM

WWW.INABNETREPORTING.COM

Original File 0916116ASBP19.prn



V I R G I N I A

IN THE CIRCUIT COURT OF PRINCE WILLIAM COUNTY

----------X

THE AMERICAN TRADITION INSTITUTE :
AND THE HONORABLE DELEGATE :
ROBERT MARSHALL, :
Plaintiffs, :
- versus - : CASE NO. CL11003236
RECTOR AND VISITORS OF THE :
UNIVERSITY OF VIRGINIA. :
Defendants. :

----------X

Manassas, Virginia

Friday, September 16, 2011

The above-entitled action came on to be heard before the Honorable Gaylord L. Finch, Jr., a judge in and for the Circuit Court for Prince William County, in Courtroom 4, Prince William County Judicial Center, 9311 Lee Avenue, Manassas, Virginia, 20110, beginning at approximately 10:24 a.m., when there were present on behalf of the respective parties.

APPEARANCES:

On behalf of the Plaintiffs:

DAVID W. SCHNARE, ESQUIRE, PH.D.,
Director, Environmental Law Center
American Tradition Institute
2020 Pennsylvania Avenue, NW
Suite 186
Washington, D.C., 20006
Email: David.S@atinstitute.org
(571) 243-7975

On behalf of the Defendants:

ROBERT M. COOPER, ESQUIRE
Stephens, Boatwright, Primeau, Cooper &
Coleman, P.C.
9255 Lee Avenue
Manassas, Virginia 20110
Email: Coop@manassaslaw.com
(703) 361-8246

AND

PETER J. FONTAINE, ESQUIRE
Cozen, O'Connor
457 Haddonfield Road

Suite 300
Cherry Hill, New Jersey 08002
Email: Pfontaine@cozen.com
(856) 910-5043

On behalf of the University of Virginia:

RICHARD C. KAST, ESQUIRE
MADELYN F. WESSEL, ESQUIRE
Office of the General Counsel
P.O. Box 400114
Charlottesville, Virginia 22904
Email: Wessel@Virginia.edu
(434) 982-2941

C O N T E N T S

THE PROCEEDINGS Page 4

E X H I B I T S

None.

forth, and file our brief. That takes us into December.

If we can get a date in early November in which you will hear our motion, you will have the rest of November, and a good portion of December, in which to conclude whether or not he is proper at -- and he won't have our brief until after you make that decision.

In any case, this matter has been going on for over four months now.

Our argument regarding the protective order is very simple. We are expanding this public opinion. For example; ACLU, I heard Justice Wendy Sierra Sloth, Republican Sloth (PH).

No one has ever argued that Mr. Horner and I are irresponsible and would release this material. We only have one person who can release that, Your Honor, and that is you.

Now, because of some dispersions cast, we want to make it clear, Your Honor. I have been a federal prosecutor on environmental issues. I have had access to extremely sensitive business information. If I were a corrupt man, I would not be here today on cash games, insider training, and retiring in Bermuda.

Kast, Richard (rck4p)

From: Dr. Schnare <schnareati@gmail.com>
Sent: Monday, October 03, 2011 9:02 AM
To: Kast, Richard (rck4p); Wessel, Madelyn (mfw2y)
Subject: Phone call agenda

Rick and Madelyn:

In preparation for our 11:30 phonecall, I'd like to suggest the following agenda.

1. You explain the "so many levels" on which you have concern, and the nature of the concern about the fact that I was an employee of EPA, operating under an outside employment waiver, prior to October 1, 2011; and, keeping in mind that while I explained that I had worked for EPA, I never made a specific statement as to my current employment other than as to my pro bono representation in the instant case and my general responsibilities for ATI, and had every good and ethical reason to say no more.
2. You explain how our *in camera*, review which prohibits any public disclosure of the emails or content of the emails "undercuts the purpose of FOIA" when the purpose of the FOIA is to permit government transparency to all interested citizens per code cited here:

§ 2.2-3700. Short title; policy.

B. By enacting this chapter, the General Assembly ensures the people of the Commonwealth **ready access to public records** in the custody of a public body or its officers and employees, and free entry to meetings of public bodies wherein the business of the people is being conducted. The affairs of government are not intended to be conducted in an atmosphere of secrecy since at all times the public is to be the beneficiary of any action taken at any level of government. Unless a public body or its officers or employees specifically elect to exercise an exemption provided by this chapter or any other statute, every meeting shall be open to the public and all public records shall be available for inspection and copying upon request. All public records and meetings shall be presumed open, unless an exemption is properly invoked.

The provisions of this chapter **shall be liberally construed to promote an increased awareness by all persons of governmental activities and afford every opportunity to citizens to witness the operations of government.**

3. Explain how UVA is in the same position as the document custodian in *Vaughn*. In that case, the custodian was required by the court to create a log, but chose to negotiate a lesser duty. Here, you refused to, and are not required to create a log, but recognize that the same problem raised in *Vaughn* hampers justice in the instant case. In light of that, you negotiated to a lesser duty by shifting the duty to create a log to the complaintant, who accepted the responsibility. Because we are willing to do the work a federal court would require a federal custodian to do, and because the documents are under seal and their contents may never be disclosed, but for a court order, you have no duty left that disposes you to seek a lesser duty and are not in the position of the Vaughn defendant.

4. Discuss what constitutes a reasonable sample of documents, what categories of documents make sense, and how to deal with specific documents we know are within the collection, but which you may not find by sampling, or otherwise choose not to include (because they would embarass the University or Mr. Mann).

EXHIBIT
25

Sincerely,

--

David W. Schnare, Esq. Ph.D.
Director
The Environmental Law Center at ATI
571-243-7975

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON D.C., 20460

OCT - 6 2011

OFFICE OF GENERAL COUNSEL

Mr. Peter J. Fontaine
Cozen O'Connor
457 Haddonfield Road
Suite 300
Cherry Hill, NJ 08002

Re: Freedom of Information Request #HQ-FOIA-02325-11

Dear Mr. Fontaine:

On behalf of the Environmental Protection Agency, I am writing to respond to the above referenced Freedom of Information Act request. You seek documents related to any request for Mr. David Schnare to represent the American Tradition Institute or any other entity with respect to a particular lawsuit.

Mr. Schnare, who retired from federal service effective Friday, September 30, 2011, was employed as an attorney-advisor in the Office of Enforcement and Compliance Assurance. As such, he was subject to the Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. Part 2635, and the U.S. Environmental Protection Agency's supplemental regulations, 5 C.F.R. Part 6401. In order to engage in outside activity that involves the practice of a profession or that deals in significant part with any ongoing Agency program, policy or operation, Mr. Schnare was required to seek prior approval from his Deputy Ethics Official. 5 C.F.R. § 2634.801 and 5 C.F.R. §6401.103.

Enclosed please find the documents that EPA has related to this activity. The request for approval of the outside activity was purportedly prepared by Mr. Schnare on or about November 16, 2010, but neither his Deputy Ethics Official nor his Assistant Deputy Ethics Official has any record of receiving it or approving this request to engage in the outside activity. Although the Agency could assert the deliberative process privilege regarding the release of these documents, we see no reason to do so. There is no fee associated with your request.

Please feel free to contact me at (202) 564 1786 if you have any further questions.

Sincerely yours,

Justina Fugh
Senior Counsel for Ethics

Enclosure

EXHIBIT
tabbies
26

Fw: fyi re David Schnare
Jeanne Duross to: Justina Fugh 09/29/2011 10:11 AM

Justina,

As we discussed, here is the request that David forwarded to Phil Brooks this morning. I have a meeting with Phil to discuss the matter and will meet with David after that.

-Jeanne

Jeanne M. Duross
Attorney-Advisor
Special Litigation and Projects Division
3111A, Ariel Rios South
U.S. EPA
(202)564-6595

May contain confidential information for internal deliberation, attorney-client information, and/or attorney work product.
----- Forwarded by Jeanne Duross/DC/USEPA/US on 09/29/2011 10:10 AM -----

From: Phillip Brooks/DC/USEPA/US
To: Jeanne Duross/DC/USEPA/US@EPA
Date: 09/29/2011 09:40 AM
Subject: fyi re David Schnare

Is this all he needed?

Phillip A. Brooks, Director
Air Enforcement Division
1200 Pennsylvania Ave. N.W.
Washington, DC 20460

Phone: (202) 564-0652
Fax: (202) 564-0015
----- Forwarded by Phillip Brooks/DC/USEPA/US on 09/29/2011 09:39 AM -----

From: David Schnare/DC/USEPA/US
To: Phillip Brooks/DC/USEPA/US@EPA
Date: 09/29/2011 09:15 AM
Subject: Re: Dave

Yes, I filed a waiver request. It's attached. At the time, ATI was called WTI.

d.



WTI outside employment request.docx

David W. Schnare, Esq. Ph.D.
202-564-4183

schnare.david@epa.gov

Phillip Brooks USA Today called asking whether you got a wai... 09/28/2011 03:38:39 PM

From: Phillip Brooks/DC/USEPA/US
To: David Schnare/DC/USEPA/US@EPA
Date: 09/28/2011 03:38 PM
Subject: Dave

USA Today called asking whether you got a waiver allowing you to represent TRI. they are requesting a copy of the waiver. Do you have a copy handy? Is there one?

Phillip A. Brooks, Director
Air Enforcement Division
1200 Pennsylvania Ave. N.W.
Washington, DC 20460

Phone: (202) 564-0652
Fax: (202) 564-0015

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

Office of Enforcement and
Compliance Assurance

MEMORANDUM

Date: November 16, 2010

From: David W. Schnare, Esq. Ph.D.
Attorney-Advisor
Air Enforcement Division

Thru: Greg Fried, Acting Chief
Stationary Source Enforcement Branch
Air Enforcement Division

To: Adam Kushner, Director
Deputy Ethics Officer
Office of Civil Enforcement

Subject: Approval for Outside Employment

Pursuant to 5 C.F.R. § 6401 and 5 C.F.R. § 2635, this memorandum seeks prior approval for outside employment. In accord with the above cited code and implementing regulations, please review the following information and provide approval for participation as a *pro bono* associate of the American Traditions Institute.

Information Required under § 6401.103

(1) Employee's name, title and grade

David W. Schnare, Attorney-Advisor GS 15/10

(2) Nature of the outside activity, including a full description of the services to be performed and the amount of compensation expected;

The American Tradition Institute is a 501(c)3 not-for-profit charitable public policy research educational and public interest law foundation. It exists to lead a national discussion about environmental issues, including air and water quality and regulation, responsible land use, natural resource management, energy development, property rights, and free-market principles of stewardship. I have been asked to serve, *pro bono*, as a

EXHIBIT
27

Director to the Institute and to help organize its planned law center. My duties as an Institute Director will not include fund-raising. My duties with the law center could include development of strategic plans, selection of projects and recruitment of staff. My duties would not include any representation at law of the Institute or its members. Institute and affiliated attorneys will conduct all representation of any matters at law.

(3) The name and business of the person or organization for which the work will be done (in cases of self-employment, indicate the type of services to be rendered and estimate the number of clients or customers anticipated during the next 6 months);

The American Tradition Institute, a 501(c)3 not-for-profit charitable public policy research, educational and public interest law foundation.

(4) The estimated time to be devoted to the activity;

Fifteen hours per week.

(5) Whether the service will be performed entirely outside of normal duty hours (if not, estimate the number of hours of absence from work required);

All services will be performed entirely outside normal duty hours.

(6) The employee's statement that no official duty time or Government property, resources, or facilities not available to the general public will be used in connection with the outside employment;

I will use no official duty time or Government property, resources, or facilities not available to the general public in connection with the outside employment.

(7) The basis for compensation (e.g., fee, per diem, per annum, etc.);

My participation will be completely *pro bono.*

(8) The employee's statement that he or she has read, is familiar with, and will abide by the restrictions described in 5 CFR part 2635 and Sec. 6401.102;

I have read and am familiar with, and will abide by the restrictions described in 5 CFR part 2635 and Sec. 6401.102

(9) An identification of any EPA assistance agreements or contracts held by a person to or for whom services would be provided.

The American Tradition Institute does not accept grants from or enter contracts with federal governmental units. I am unaware of any assistance agreements or contracts between EPA and the American Tradition Institute, despite a good faith effort to identify same.

For this Record...
Cert of Good Standing
File a Document
Subscribe Email Notification
Unsubscribe Email Notification
Return to Summary

Business Home
Business Information
Business Search

FAQs, Glossary and Information

History and Documents

American Tradition Institute
ID number: 20091091487

Found 15 matching record(s). Viewing page 1 of 1.

#	Event	Date Filed	Date Posted	EffectiveDate	Document # (click to view)	Comment
1	Articles of Incorporation	02/11/2009	02/11/2009	02/11/2009 10:24 PM	20091091487	
2	Articles of Amendment	03/04/2009	03/04/2009	03/04/2009 05:58 AM	20091130060	
3	Articles of Amendment	06/17/2009	06/17/2009	06/17/2009 02:53 PM	20091331276	
4	Articles of Amendment	08/27/2009	08/27/2009	08/27/2009 01:13 PM	20091458465	
5	postcard notification printed 01/26/2010 to be mailed 02/01/2010	01/26/2010	01/26/2010	01/26/2010 04:23 AM		annual report due: 04/30/2010
6	Change in Status	05/01/2010	05/01/2010	05/01/2010 01:54 AM		Failure to file annual report
7	postcard notification printed 05/21/2010 to be mailed 06/01/2010	05/21/2010	05/21/2010	05/21/2010 03:08 AM		annual report due: 2010-07-31
8	Change in Status	08/01/2010	08/01/2010	08/01/2010 02:34 AM		Failure to file annual report
9	postcard notification printed 08/01/2010 to be mailed this month	08/01/2010	08/01/2010	08/01/2010 02:57 AM		failure to file annual report
10	Statement Curing Delinquency	10/01/2010	10/01/2010	10/01/2010 06:09 PM	20101545015	
11	Articles of Amendment	12/18/2010	12/18/2010	12/18/2010 01:25 PM	20101685751	Change of Entity Name
12	Affidavit for Removal of Personal Identifying Information	12/20/2010	12/27/2010	12/20/2010 04:01 PM	20101688144	
13	Statement of Change	12/20/2010	12/20/2010	12/20/2010 04:04 PM	20101688158	
14	Statement of Correction	03/17/2011	03/17/2011	03/17/2011 04:05 PM	20111163188	Principal address corrected;
15	postcard notification printed 09/23/2011 to be mailed 10/01/2011	09/23/2011	09/23/2011	09/23/2011 02:52 AM		periodic report due: 12/31/2011

Return to Summary

EXHIBIT
tabbies
28

Document must be filed electronically.
Paper documents will not be accepted.
Document processing fee $50.00
Fees & forms/cover sheets are subject to change.
To access other information or print copies of filed documents, visit www.sos.state.co.us and select Business Center.

E-Filed

Colorado Secretary of State
Date and Time: 02/11/2009 10:24 PM
ID Number: 20091091487
Document number: 20091091487
Amount Paid: $50.00

ABOVE SPACE FOR OFFICE USE ONLY

Articles of Incorporation for a Nonprofit Corporation

filed pursuant to § 7-122-101 and § 7-122-102 of the Colorado Revised Statutes (C.R.S.)

1. The domestic entity name for the nonprofit corporation is
Western Tradition Institute

*(**Caution:** The use of certain terms or abbreviations are restricted by law. Read instructions for more information.)*

2. The principal office address of the nonprofit corporation's initial principal office is

Street address
2535 Franklin St
(Street number and name)
Denver | CO | 80205
(City) | *(State)* | *(ZIP/Postal Code)*
(Province – if applicable) | United States *(Country)*

Mailing address
(**leave blank** if same as street address)
PO Box 88
(Street number and name or Post Office Box information)
Denver | CT | 80201
(City) | *(State)* | *(ZIP/Postal Code)*
(Province – if applicable) | United States *(Country)*

3. The registered agent name and registered agent address of the nonprofit corporation's initial registered agent are

Name
(if an individual)
Reed | John | | |
(Last) | *(First)* | *(Middle)* | *(Suffix)*

OR

(if an entity)
*(**Caution:** Do not provide both an individual and an entity name.)*

Street address
2535 Franklin Street
(Street number and name)
Denver | CO | 80205
(City) | *(State)* | *(ZIP Code)*

Mailing address
(leave blank if same as street address)

PO Box 88
(Street number and name or Post Office Box information)

Denver *(City)* CO *(State)* 80205 *(ZIP Code)*

(The following statement is adopted by marking the box.)

☑ The person appointed as registered agent above has consented to being so appointed.

4. The true name and mailing address of the incorporator are

Name
(if an individual)

Reed *(Last)* Dan *(First)* *(Middle)* *(Suffix)*

OR

(if an entity)

***(Caution:** Do not provide both an individual and an entity name.)*

Mailing address

PO Box 88
(Street number and name or Post Office Box information)

Denver *(City)* CO *(State)* 80201 *(ZIP/Postal Code)*

(Province - if applicable) United States *(Country)*

(If the following statement applies, adopt the statement by marking the box and include an attachment.)

☐ The corporation has one or more additional incorporators and the name and mailing address of each additional incorporator are stated in an attachment.

5. *(If the following statement applies, adopt the statement by marking the box.)*

☑ The nonprofit corporation will have voting members.

6. *(The following statement is adopted by marking the box.)*

☑ Provisions regarding the distribution of assets on dissolution are included in an attachment.

7. *(If the following statement applies, adopt the statement by marking the box and include an attachment.)*

☐ This document contains additional information as provided by law.

8. ***(Caution:** Leave blank if the document does not have a delayed effective date. Stating a delayed effective date has significant legal consequences. Read instructions before entering a date.)*

(If the following statement applies, adopt the statement by entering a date and, if applicable, time using the required format.)

The delayed effective date and, if applicable, time of this document is/are _____.
(mm/dd/yyyy hour:minute am/pm)

Notice:

Causing this document to be delivered to the Secretary of State for filing shall constitute the affirmation or acknowledgment of each individual causing such delivery, under penalties of perjury, that the document is the individual's act and deed, or that the individual in good faith believes the document is the act and deed of the person on whose behalf the individual is causing the document to be delivered for filing, taken in conformity with the requirements of part 3 of article 90 of title 7, C.R.S., the constituent documents, and the organic statutes, and that the individual in good faith believes the facts stated in the document are true and the document complies with the requirements of that Part, the constituent documents, and the organic statutes.

This perjury notice applies to each individual who causes this document to be delivered to the Secretary of State, whether or not such individual is named in the document as one who has caused it to be delivered.

9. The true name and mailing address of the individual causing the document to be delivered for filing are

Reed	John		
(Last)	*(First)*	*(Middle)*	*(Suffix)*

PO Box 88
(Street number and name or Post Office Box information)

Denver	CO	80201
(City)	*(State)*	*(ZIP/Postal Code)*

	United States
(Province – if applicable)	*(Country)*

(If the following statement applies, adopt the statement by marking the box and include an attachment.)

☐ This document contains the true name and mailing address of one or more additional individuals causing the document to be delivered for filing.

Disclaimer:

This form/cover sheet, and any related instructions, are not intended to provide legal, business or tax advice, and are furnished without representation or warranty. While this form/cover sheet is believed to satisfy minimum legal requirements as of its revision date, compliance with applicable law, as the same may be amended from time to time, remains the responsibility of the user of this form/cover sheet. Questions should be addressed to the user's legal, business or tax advisor(s).

WESTERN TRADITION PARTNERSHIP DISSOLUTION CLAUSE

Upon dissolution, all assets shall be distributed to an organization(s) organized and operated exclusively for charitable purposes, as specified in section 214, and which has established its tax exempt status under section 501(c)(3) of the Internal Revenue Code, or under section 23701d of the Revenue and Taxation Code.

E-Filed

Colorado Secretary of State
Date and Time: 03/04/2009 05:58 AM
ID Number: 20091091487

Document number: 20091130060
Amount Paid: $25.00

Document processing fee
If document is filed on paper $125.00
If document is filed electronically $ 25.00
Fees & forms/cover sheets are subject to change.
To file electronically, access instructions for this form/cover sheet and other information or print copies of filed documents, visit www.sos.state.co.us and select Business Center.
Paper documents must be typewritten or machine printed.

ABOVE SPACE FOR OFFICE USE ONLY

Articles of Amendment

filed pursuant to §7-90-301, et seq. and §7-130-105 of the Colorado Revised Statutes (C.R.S.)

ID number 20091091487

1. Entity name Western Tradition Institute
(If changing the name of the corporation, indicate name BEFORE the name change)

2. New Entity name (if applicable) _____

3. *(If the following statement applies, adopt the statement by marking the box and include an attachment.)*
☑ Other amendments are attached.

4. If the nonprofit corporation's period of duration as amended is less than perpetual, state the date on which the period of duration expires _____
(mm/dd/yyyy)

OR

If the nonprofit corporation's period of duration as amended is perpetual, mark this box ☑

5. *(Optional)* Delayed effective date 02/13/2009
(mm/dd/yyyy)

6. Additional information may be included pursuant to other organic statutes such as title 12, C.R.S. If applicable, mark this box ☐ and include an attachment stating the additional information.

Notice:

Causing this document to be delivered to the secretary of state for filing shall constitute the affirmation or acknowledgment of each individual causing such delivery, under penalties of perjury, that the document is the individual's act and deed, or that the individual in good faith believes the document is the act and deed of the person on whose behalf the individual is causing the document to be delivered for filing, taken in conformity with the requirements of part 3 of article 90 of title 7, C.R.S., the constituent documents, and the organic statutes, and that the individual in good faith believes the facts stated in the document are true and the document complies with the requirements of that Part, the constituent documents, and the organic statutes.

This perjury notice applies to each individual who causes this document to be delivered to the secretary of state, whether or not such individual is named in the document as one who has caused it to be delivered.

7. Name(s) and address(es) of the individual(s) causing the document to be delivered for filing

John	Reed		
(Last)	*(First)*	*(Middle)*	*(Suffix)*

2535 Franklin St.
(Street name and number or Post Office Box information)

Denver	CO	80201
(City)	*(State)*	*(Postal/Zip Code)*
	United States	
(Province if applicable)	*(Country - if not US)*	

(The document need not state the true name and address of more than one individual. However, if you wish to state the name and address of any additional individuals causing the document to be delivered for filing, mark this box ☐ *and include an attachment stating the name and address of such individuals.)*

Disclaimer:

This form, and any related instructions, are not intended to provide legal, business or tax advice, and are offered as a public service without representation or warranty. While this form is believed to satisfy minimum legal requirements as of its revision date, compliance with applicable law, as the same may be amended from time to time, remains the responsibility of the user of this form. Questions should be addressed to the user's attorney.

RESOLUTION APPROVING AMENDMENT OF THE ARTICLES OF INCORPORATION

WHEREAS, pursuant to the application and Bylaws of this Corporation, it is deemed desirable and in the its best interests that the following revision be taken by this corporation pursuant to this written Consent:

NOW THEREFORE, BE IT RESOLVED:

That Western Tradition Institute erred in indicating in its initial filing that it would have voting members; and that indeed, it does and shall not, but shall be governed by a Board of Directors yet to be named.

Said and done this 13th Day of February, 2009 by John Reed, incorporator.

John D. Reed

E-Filed

Colorado Secretary of State
Date and Time: 06/17/2009 02:53 PM
ID Number: 20091091487

Document number: 20091331276
Amount Paid: $25.00

Document processing fee
If document is filed on paper $125.00
If document is filed electronically $ 25.00
Fees & forms/cover sheets are subject to change.
To file electronically, access instructions for this form/cover sheet and other information or print copies of filed documents, visit www.sos.state.co.us and select Business Center.
Paper documents must be typewritten or machine printed.

ABOVE SPACE FOR OFFICE USE ONLY

Articles of Amendment

filed pursuant to §7-90-301, et seq. and §7-130-105 of the Colorado Revised Statutes (C.R.S.)

ID number 20091091487

1. Entity name Western Tradition Institute
(If changing the name of the corporation, indicate name BEFORE the name change)

2. New Entity name (if applicable) _____

3. *(If the following statement applies, adopt the statement by marking the box and include an attachment.)*
☑ Other amendments are attached.

4. If the nonprofit corporation's period of duration as amended is less than perpetual, state the date on which the period of duration expires _____
(mm/dd/yyyy)

OR

If the nonprofit corporation's period of duration as amended is perpetual, mark this box ☑

5. *(Optional)* Delayed effective date _____
(mm/dd/yyyy)

6. Additional information may be included pursuant to other organic statutes such as title 12, C.R.S. If applicable, mark this box ☐ and include an attachment stating the additional information.

Notice:

Causing this document to be delivered to the secretary of state for filing shall constitute the affirmation or acknowledgment of each individual causing such delivery, under penalties of perjury, that the document is the individual's act and deed, or that the individual in good faith believes the document is the act and deed of the person on whose behalf the individual is causing the document to be delivered for filing, taken in conformity with the requirements of part 3 of article 90 of title 7, C.R.S., the constituent documents, and the organic statutes, and that the individual in good faith believes the facts stated in the document are true and the document complies with the requirements of that Part, the constituent documents, and the organic statutes.

This perjury notice applies to each individual who causes this document to be delivered to the secretary of state, whether or not such individual is named in the document as one who has caused it to be delivered.

7. Name(s) and address(es) of the individual(s) causing the document to be delivered for filing

Nicolais	Mario	Daniel	II
(Last)	*(First)*	*(Middle)*	*(Suffix)*

1601 Blake St
(Street name and number or Post Office Box information)

Suite 310

Denver	CO	80202
(City)	*(State)*	*(Postal/Zip Code)*
	United States	
(Province if applicable)	*(Country if not US)*	

(The document need not state the true name and address of more than one individual. However, if you wish to state the name and address of any additional individuals causing the document to be delivered for filing, mark this box ☐ *and include an attachment stating the name and address of such individuals.)*

Disclaimer:

This form, and any related instructions, are not intended to provide legal, business or tax advice, and are offered as a public service without representation or warranty. While this form is believed to satisfy minimum legal requirements as of its revision date, compliance with applicable law, as the same may be amended from time to time, remains the responsibility of the user of this form. Questions should be addressed to the user's attorney.

WESTERN TRADITION INSTITUTE
2535 Franklin St
Denver, CO 80205

Addendum I, Articles of Incorporation (Non-Profit Corporation)

Article II of the bylaws for **WESTERN TRADITION INSTITUTE** provides for distribution of assets upon dissolution as follows:

ARTICLE II. PURPOSES

Section 2.1 This corporation is organized exclusively for charitable purposes defined as education, study, and dissemination of information pertaining to its field of interest, within the meaning of Section 501(c)(3) of the Internal Revenue Code, as now enacted or hereafter amended, including, for such purposes, the making of distributions to organizations that also qualify as Section 501(c)(3) exempt organizations. To this end, the corporation shall publish studies in print or on the internet, make presentations, and otherwise and in any manner participate in the educational and scientific process. All funds, whether income or principal, and whether acquired by gift or contribution or otherwise, shall be devoted to said purposes.

Section 2.2 This organization shall not engage in the advancement or defeat of political candidates or of legislation.

Article VIII of the bylaws for **WESTERN TRADITION INSTITUTE** provides for distribution of assets upon dissolution as follows:

ARTICLE VIII. MISCELLANEOUS

Section 8.6 Dissolution. Upon dissolution, all assets shall be distributed to an organization(s) organized and operated exclusively for charitable purposes, as specified in section 214, and which has established its tax exempt status under section 501(c)(3) of the Internal Revenue Code, or under section 23701d of the Revenue and Taxation Code.

Document must be filed electronically.
Paper documents will not be accepted.
Document processing fee $100.00
Fees & forms/cover sheets are subject to change.
To access other information or print copies of filed documents, visit www.sos.state.co.us and select Business.

E-Filed

Colorado Secretary of State
Date and Time: 10/01/2010 06:09 PM
ID Number: 20091091487
Document number: 20101545015
Amount Paid: $100.00

ABOVE SPACE FOR OFFICE USE ONLY

Statement Curing Delinquency

filed pursuant to §7-90-904 of the Colorado Revised Statutes (C.R.S)

1. For the delinquent entity, its ID number, entity name and jurisdiction of formation are

ID number: 20091091487
(Colorado Secretary of State ID number)

Entity name: Western Tradition Institute

Jurisdiction where formed: Colorado

2. By providing the information required herein, this statement corrects all grounds for delinquency cited by the secretary of state.

3. The registered agent name and registered agent address of the registered agent are

Name
(if an individual): Reed (*Last*) John (*First*) (*Middle*) (*Suffix*)

OR

(if an entity)
*(**Caution:** Do not provide both an individual and an entity name).*

The person appointed as registered agent above has consented to being so appointed.

Street address: 1601 Blake Street
(Street number and name)
Suite 301
Denver (*City*) CO (*State*) 80201 (*Zip Code*)

Mailing address
(leave blank if same as street address): PO Box 88
(Street number and name or Post Office Box information)
Denver (*City*) CO (*State*) 80201 (*Zip Code*)

(If the following statement applies, adopt the statement by marking the box.)

☐ The mailing address in the records of the Secretary of State is no longer different than the street address and is no longer required.

4. The principal office address of the entity's principal office is

Street address

1601 Blake Street
(Street number and name)
Suite 301
Denver — *(City)* — CO — *(State)* — 80202 — *(Postal/Zip Code)*
(Province – if applicable) — United States — *(Country – if not US)*

Mailing address
(leave blank if same as street address)

PO Box 88
(Street number and name or Post Office Box information)
Denver — *(City)* — CO — *(State)* — 80202 — *(Postal/Zip Code)*
(Province – if applicable) — United States — *(Country – if not US)*

(If the following statement applies, adopt the statement by marking the box.)

☐ The mailing address in the records of the Secretary of State is no longer different than the street address and is no longer required.

5. *(If the following statement applies, adopt the statement by marking the box and include an attachment.)*

☐ This document contains additional information as provided by law.

6. ***(Caution:** Leave blank if the document does not have a delayed effective date. Stating a delayed effective date has significant legal consequences. Read instructions before entering a date.)*

(If the following statement applies, adopt the statement by entering a date and, if applicable, time using the required format.)

The delayed effective date and, if applicable, time of this document is/are _____.
(mm/dd/yyyy hour:minute am/pm)

Notice:

Causing this document to be delivered to the secretary of state for filing shall constitute the affirmation or acknowledgment of each individual causing such delivery, under penalties of perjury, that the document is the individual's act and deed, or that the individual in good faith believes the document is the act and deed of the person on whose behalf the individual is causing the document to be delivered for filing, taken in conformity with the requirements of part 3 of article 90 of title 7, C.R.S., the constituent documents, and the organic statutes, and that the individual in good faith believes the facts stated in the document are true and the document complies with the requirements of that Part, the constituent documents, and the organic statutes.

This perjury notice applies to each individual who causes this document to be delivered to the secretary of state, whether or not such individual is named in the document as one who has caused it to be delivered.

7. The true name and mailing address of the individual causing the document to be delivered for filing are

Reed — *(Last)* — John — *(First)* — *(Middle)* — *(Suffix)*
PO Box 88
(Street number and name or Post Office Box information)
Denver — *(City)* — CO — *(State)* — 80201 — *(Postal/Zip Code)*
(Province – if applicable) — *(Country – if not US)*

(If the following statement applies, adopt the statement by marking the box and include an attachment.)

☐ This document contains the true name and mailing address of one or more additional individuals causing the document to be delivered for filing.

Disclaimer:

This form/cover sheet, and any related instructions, are not intended to provide legal, business or tax advice, and are furnished without representation or warranty. While this form/cover sheet is believed to satisfy minimum legal requirements as of its revision date, compliance with applicable law, as the same may be amended from time to time, remains the responsibility of the user of this form/cover sheet. Questions should be addressed to the user's legal, business or tax advisor(s).

Document must be filed electronically.
Paper documents will not be accepted.
Document processing fee $25.00
Fees & forms/cover sheets are subject to change.
To access other information or print copies of filed documents, visit www.sos.state.co.us and select Business.

E-Filed

Colorado Secretary of State
Date and Time: 12/18/2010 01:25 PM
ID Number: 20091091487
Document number: 20101685751
Amount Paid: $25.00

INFORMATION REDACTED

ABOVE SPACE FOR OFFICE USE ONLY

Articles of Amendment

filed pursuant to §7-90-301, et seq. and §7-130-105 of the Colorado Revised Statutes (C.R.S.)

ID number 20091091487

1. Entity name: Western Tradition Institute
(If changing the name of the corporation, indicate name BEFORE the name change)

2. New Entity name (if applicable): American Tradition Institute

3. *(If the following statement applies, adopt the statement by marking the box and include an attachment.)*
☐ Other amendments are attached.

4. If the nonprofit corporation's period of duration as amended is less than perpetual, state the date on which the period of duration expires _____
(mm/dd/yyyy)

OR

If the nonprofit corporation's period of duration as amended is perpetual, mark this box ☑

5. *(Optional)* Delayed effective date _____
(mm/dd/yyyy)

6. Additional information may be included pursuant to other organic statutes such as title 12, C.R.S. If applicable, mark this box ☐ and include an attachment stating the additional information.

Notice:

Causing this document to be delivered to the secretary of state for filing shall constitute the affirmation or acknowledgment of each individual causing such delivery, under penalties of perjury, that the document is the individual's act and deed, or that the individual in good faith believes the document is the act and deed of the person on whose behalf the individual is causing the document to be delivered for filing, taken in conformity with the requirements of part 3 of article 90 of title 7, C.R.S., the constituent documents, and the organic statutes, and that the individual in good faith believes the facts stated in the document are true and the document complies with the requirements of that Part, the constituent documents, and the organic statutes.

This perjury notice applies to each individual who causes this document to be delivered to the secretary of state, whether or not such individual is named in the document as one who has caused it to be delivered.

7. Name(s) and address(es) of the individual(s) causing the document to be delivered for filing

(Last) (First) (Middle) (Suffix)

1601 Blake St # 301

(Street name and number or Post Office Box information)

Denver CO 80202

(City) (State) (Postal/Zip Code)

United States

(Province – if applicable) (Country – if not US)

(The document need not state the true name and address of more than one individual. However, if you wish to state the name and address of any additional individuals causing the document to be delivered for filing, mark this box ☐ and include an attachment stating the name and address of such individuals.)

Disclaimer:

This form, and any related instructions, are not intended to provide legal, business or tax advice, and are offered as a public service without representation or warranty. While this form is believed to satisfy minimum legal requirements as of its revision date, compliance with applicable law, as the same may be amended from time to time, remains the responsibility of the user of this form. Questions should be addressed to the user's attorney.

Document processing fee: FREE
Fees & forms/cover sheets are subject to change.

20101688144 C
AFFPII
SECRETARY OF STATE
12/20/2010 04:01:40

Paper documents must be typewritten or machine printed.

ABOVE SPACE FOR OFFICE USE ONLY

Statement of Removal of Personal Identifying Information

filed pursuant to § 7-90-306 of the Colorado Revised Statutes (C.R.S.)

1. My name is Mario Nicholas. I am 18 or more years of age. Pursuant to § 7-90-306, C.R.S., I am duly authorized to deliver a written request to the Colorado Secretary of State to remove personal identifying information from the publicly accessible documents and other records of the Secretary of State.

2. The ID number of the record containing a publicly accessible filed document that contains personal identifying information is 20091091487.

 The entity name, trade name, or trademark description to which such record relates is
 American Tradition Institute

3. The document number of the filed document that contains personal identifying information is 20101685751.

4. The type of personal identifying information requested to be removed from such document is
 Name of the individual causing the document to be filed
 (Caution: Do not restate the personal identifying information requested to be removed.)

5. The personal identifying information to be removed is not required by law to be included in such document or other records of the Secretary of State.

6. The location of the personal identifying information in the filed document described above is
 Paragraph 7

7. I understand that this document may be filed in the publicly accessible records and I consent to such filing by the Secretary of State.

8. If the Secretary of State refuses to file this document, notice of such refusal may be delivered to the following mailing address: 1601 Blake St Suite 3310
 (Street number and name or Post Office Box information)

 Denver *(City)* | CO *(State)* | 80202 *(ZIP/Postal Code)*

 (Province – if applicable) | *(Country)*

Notice:

Causing this document to be delivered to the Secretary of State for filing shall constitute the affirmation or acknowledgment of each individual causing such delivery, under penalties of perjury, that such document is such individual's act and deed, or that such individual in good faith believes such document is the act and deed of the person on whose behalf such individual is causing such document to be delivered for filing, taken in conformity with the requirements of part 3 of article 90 of title 7, C.R.S., and, if applicable, the constituent documents and the organic statutes, and that such individual in good faith believes the facts stated in such document are true and such document complies with the requirements of that Part, the constituent documents, and the organic statutes.

This perjury notice applies to each individual who causes this document to be delivered to the Secretary of State, whether or not such individual is identified in this document as one who has caused it to be delivered.

9. The true name and mailing address of the individual causing this document to be delivered for filing are

Nicholas (Last) Mario (First) (Middle) (Suffix)

1601 Blake St # 301
(Street number and name or Post Office Box information)

Denver (City) CO (State) 80202 (ZIP/Postal Code)

(Province – if applicable) (Country)

(If applicable, adopt the following statement by marking the box and include an attachment.)

☑ This document contains the true name and mailing address of one or more additional individuals causing the document to be delivered for filing.

Disclaimer:

This form/cover sheet, and any related instructions, are not intended to provide legal, business or tax advice, and are furnished without representation or warranty. While this form/cover sheet is believed to satisfy minimum legal requirements as of its revision date, compliance with applicable law, as the same may be amended from time to time, remains the responsibility of the user of this form/cover sheet. Questions should be addressed to the user's legal, business or tax advisor(s).

Document processing fee
If document is filed on paper $10.00
If document is filed electronically Currently Not Available

Fees & forms/cover sheets are subject to change.

To file electronically, access instructions for this form/cover sheet and other information or print copies of filed documents, visit www.sos.state.co.us and select Business.

Paper documents must be typewritten or machine printed.

20101688158
$10.00
SECRETARY OF STATE
12/20/2010 16:04:09

ABOVE SPACE FOR OFFICE USE ONLY

Statement of Change Changing Information Other Than Principal Office Address or Registered Agent Information

filed pursuant to §7-90-305.5 and, if applicable, §7-90-804 of the Colorado Revised Statutes (C.R.S.)

ID number: 20091091487

1. Entity name: American Tradition Institute

2. True name:
(if different from the entity name)

Complete lines 3 - 9 as applicable. You must complete section 10.

3. Document number: 20101685751
(required for change(s) to 4, 5, 6. 7 and/or 8 below)

4. Change of entity name of record (LLP, art. 61 LLLP or foreign entity only):
New entity name:

5. Change of true name of record (LLP, art. 61 LLLP, general partnership or foreign entity only):
New true name:

6. Change of jurisdiction of formation of record (foreign entity only):
New jurisdiction of formation:

7. Change of entity form of record (foreign entity only):
New entity form:

8. Other change(s) not provided for above:

If other information contained in the filed document is being changed, mark this box ☑ and include an attachment stating the information to be changed and each such change.

If other information is being added or deleted, mark this box ☐ and include an attachment stating each addition or deletion.

9. *(Optional)* Delayed effective date: _____
(mm/dd/yyyy)

Notice:

Causing this document to be delivered to the Secretary of State for filing shall constitute the affirmation or acknowledgment of each individual causing such delivery, under penalties of perjury, that such document is such individual's act and deed, or that such individual in good faith believes such document is the act and deed of the person on whose behalf such individual is causing such document to be delivered for filing, taken in conformity with the requirements of part 3 of article 90 of title 7, C.R.S. and, if applicable, the constituent documents and the organic statutes, and that such individual in good faith believes the facts stated in such document are true and such document complies with the requirements of that Part, the constituent documents, and the organic statutes.

This perjury notice applies to each individual who causes this document to be delivered to the Secretary of State, whether or not such individual is identified in this document as one who has caused it to be delivered.

10. The true name and mailing address of the individual causing this document to be delivered for filing are

Nicholas (Last) Mario (First) _____ (Middle) _____ (Suffix)
1601 Blake Street # 301
(Street number and name or Post Office Box information)

Denver *(City)* CO *(State)* 80014 *(ZIP/Postal Code)*
_____ *(Province – if applicable)* _____ *(Country)*

(If applicable, adopt the following statement by marking the box and include an attachment.)
☐ This document contains the true name and mailing address of one or more additional individuals causing the document to be delivered for filing.

Disclaimer:

This form/cover sheet, and any related instructions, are not intended to provide legal, business or tax advice, and are furnished without representation or warranty. While this form/cover sheet is believed to satisfy minimum legal requirements as of its revision date, compliance with applicable law, as the same may be amended from time to time, remains the responsibility of the user of this form/cover sheet. Questions should be addressed to the user's legal, business or tax advisor(s).

ID Number 20091091487

Paragraph 7: to change the name of the individual causing the socument to be filled

The name should be Mario Nicholas

E-Filed

Colorado Secretary of State
Date and Time: 03/17/2011 04:05 PM
ID Number: 20091091487

Document number: 20111163188
Amount Paid: $10.00

Document must be filed electronically
Paper documents will not be accepted.
Document processing fee $10.00
Fees & forms/cover sheets are subject to change.
To access other information or print copies of filed documents, visit www.sos.state.co.us and select Business Center.

ABOVE SPACE FOR OFFICE USE ONLY

Statement of Correction
Correcting the Principal Office Address

filed pursuant to § 7-90-305 of the Colorado Revised Statutes (C.R.S.)

1. The entity ID number and the entity name, or, if the entity does not have an entity name, the true name are

Entity ID number: 20091091487
(Colorado Secretary of State ID number)

Entity name or True name: American Tradition Institute

2. The document number of the filed document that is corrected is 20101685751.

3. The principal office address as stated in the document identified above is incorrect.

Such address, as corrected, is

Street address:
c/o 1601 Blake St
(Street number and name)
Suite 310
Denver — *(City)* CO — *(State)* 80202 — *(ZIP/Postal Code)*
(Province – if applicable) United States — *(Country)*

Mailing address
(**leave blank** if same as street address):
P.O. Box 88
(Street number and name or Post Office Box information)
Denver — *(City)* CO — *(State)* 80201 — *(ZIP/Postal Code)*
(Province – if applicable) United States — *(Country)*

4. *(If applicable, adopt the following statement by marking the box and include an attachment.)*

☐ This document contains additional information as provided by law.

Notice:

Causing this document to be delivered to the Secretary of State for filing shall constitute the affirmation or acknowledgment of each individual causing such delivery, under penalties of perjury, that such document is such individual's act and deed, or that such individual in good faith believes such document is the act and deed of the person on whose behalf such individual is causing such document to be delivered for filing, taken in conformity with the requirements of part 3 of article 90 of title 7, C.R.S. and, if applicable, the constituent documents and the organic statutes, and that such individual in good faith believes the facts stated in such document are true and such document complies with the requirements of that Part, the constituent documents, and the organic statutes.

This perjury notice applies to each individual who causes this document to be delivered to the Secretary of State, whether or not such individual is identified in this document as one who has caused it to be delivered.

5. The true name and mailing address of the individual causing this document to be delivered for filing are

Nicolais	Mario	Daniel	II
(Last)	*(First)*	*(Middle)*	*(Suffix)*

1601 Blake St
(Street number and name or Post Office Box information)

Suite 310

Denver	CO	80202
(City)	*(State)*	*(Zip/Postal Code)*

	United States
(Province – if applicable)	*(Country)*

(If applicable, adopt the following statement by marking the box and include an attachment.)

☐ This document contains the true name and mailing address of one or more additional individuals causing the document to be delivered for filing.

Disclaimer:

This form/cover sheet, and any related instructions, are not intended to provide legal, business or tax advice, and are furnished without representation or warranty. While this form/cover sheet is believed to satisfy minimum legal requirements as of its revision date, compliance with applicable law, as the same may be amended from time to time, remains the responsibility of the user of this form/cover sheet. Questions should be addressed to the user's legal, business or tax advisor(s).

Kast, Richard (rck4p)

From: Kast, Richard (rck4p) <rck4p@eservices.virginia.edu>
Sent: Wednesday, October 12, 2011 2:20 PM
To: Richard Kast (rck4p@Virginia.edu)
Subject: Sent from Snipping Tool

Dr. Schnare	Thu 9/29/2011 3:42 PM	13 KB	Re: Follow-up Conversation	
Dr. Schnare	Thu 9/29/2011 2:32 PM	11 KB	Re: Follow-up Conversation	
Dr. Schnare	Thu 9/29/2011 12:54 PM	6 KB	Re: Follow-up Conversation	
Dr. Schnare	Wed 9/28/2011 2:51 PM	5 KB	Re: Sur-reply CD	
Dr. Schnare	Wed 9/28/2011 12:11 PM	2 KB	Sur-reply CD	
Dr. Schnare	Tue 9/27/2011 11:16 AM	5 KB	Freedom of Information Request	
Dr. Schnare	Wed 9/14/2011 5:04 PM	4 KB	Re: Reply Memorandum	
Dr. Schnare	Wed 9/14/2011 2:41 PM	4 KB	Re: American Tradition Institute v. UVA	
Dr. Schnare	Fri 9/9/2011 3:17 PM	2 MB	ATI v UVA CL 11-3236 Petitioners' answers :	
Dr. Schnare	Fri 9/9/2011 3:09 PM	4 KB	Re: Response Memorandum; Civil Action N	
Dr. Schnare	Fri 9/9/2011 10:48 AM	12 KB	Re: ATI v UVA CL 11-3236 Hearing Date anc	
Dr. Schnare	Thu 9/8/2011 12:08 PM	5 KB	RE: ATI v UVA Revision of the protective or	
Dr. Schnare	Thu 9/8/2011 11:09 AM	6 KB	Re: ATI v UVA CL 11-3236 Hearing Date anc	
Dr. Schnare	Tue 9/6/2011 3:19 PM	16 KB	Re: ATI v UVA CL 11-3236 Motions Practice	
Dr. Schnare	Tue 9/6/2011 3:04 PM	12 KB	Re: ATI v UVA CL 11-3236 Motions Practice	
Dr. Schnare	Tue 9/6/2011 12:04 PM	8 KB	Re: Your message	
Dr. Schnare	Tue 9/6/2011 11:05 AM	4 KB	Re: Your message	
Dr. Schnare	Tue 9/6/2011 10:51 AM	5 KB	ATI v UVA CL 11-3236 Motions Practice Con	
Dr. Schnare	Fri 9/2/2011 2:33 PM	472 KB	Re: Attached Letter	
Dr. Schnare	Wed 8/31/2011 5:01 PM	5 KB	Re: Attached Letter	
Dr. Schnare	Mon 8/29/2011 12:18 PM	9 KB	Re: Michael Mann	
Dr. Schnare	Mon 8/22/2011 2:45 PM	10 KB	Re: FOIA Request	
Dr. Schnare	Mon 8/22/2011 11:36 AM	7 KB	Re: FOIA Request	
Dr. Schnare	Fri 8/19/2011 5:50 PM	8 KB	Re: FOIA Request	
Dr. Schnare	Fri 8/19/2011 5:14 PM	4 KB	Re: FOIA Request	
Dr. Schnare	Thu 8/4/2011 10:15 AM	8 KB	Re: FOIA Request	

EXHIBIT
tabbies
29

Kast, Richard (rck4p)

From: Kast, Richard (rck4p) <rck4p@eservices.virginia.edu>
Sent: Wednesday, October 12, 2011 2:21 PM
To: Richard Kast (rck4p@Virginia.edu)
Subject: Sent from Snipping Tool

Dr. Schnare	Mon 7/11/2011 7:37 PM	4 KB	ATI FOIA payment	
Dr. Schnare	Mon 6/27/2011 11:40 PM	3 KB	ATI v Rectors - Order ready for entry	
Dr. Schnare	Mon 6/27/2011 11:01 AM	5 KB	Re: Order	
Dr. Schnare	Tue 6/7/2011 3:43 PM	14 KB	Re: Close out on yesterday	
Dr. Schnare	Tue 6/7/2011 8:21 AM	6 KB	Close out on yesterday	
Dr. Schnare	Wed 6/1/2011 12:14 PM	10 KB	Re: Proposed meeting	
Dr. Schnare	Tue 5/31/2011 8:49 AM	4 KB	Proposed meeting	
Dr. Schnare	Thu 5/26/2011 2:47 PM	4 KB	Quick note	
Dr. Schnare	Mon 5/23/2011 4:25 PM	3 KB	ATI schedule	
Dr. Schnare	Mon 5/23/2011 2:45 PM	7 KB	Re: ATI v Rector: Proposed Orders	
Dr. Schnare	Fri 5/20/2011 11:55 AM	53 KB	ATI v Rector: Proposed Orders	
Dr. Schnare	Fri 5/20/2011 9:48 AM	19 KB	Re: Scheduling Call ATI v Rector CL-11-323	
Dr. Schnare	Thu 5/19/2011 2:06 PM	3 KB	Draft motions	
Dr. Schnare	Wed 5/18/2011 4:31 PM	14 KB	Re: Scheduling Call ATI v Rector CL-11-323	
Dr. Schnare	Wed 5/18/2011 1:24 PM	9 KB	Re: Scheduling Call ATI v Rector CL-11-323	
Dr. Schnare	Wed 5/18/2011 10:11 AM	4 KB	Re: Scheduling Call ATI v Rector CL-11-323	
Dr. Schnare	Tue 5/17/2011 4:19 PM	4 KB	Scheduling Call ATI v Rector CL-11-3236	
Dr. Schnare	Tue 5/17/2011 3:55 PM	60 KB	Re: Your FOIA Request	
Dr. Schnare	Mon 5/16/2011 2:00 PM	6 KB	Re: ATI v Rector	
Dr. Schnare	Mon 5/16/2011 12:30 PM	719 KB	ATI v Rector	
Dr. Schnare	Thu 4/7/2011 4:38 PM	51 KB	Re: Your request	
Dr. Schnare	Mon 3/28/2011 3:31 PM	4 KB	Re: FOIA Request	
Dr. Schnare	Thu 3/24/2011 3:46 PM	4 KB	Re: VFOIA to the University of Virginia -- N	
Dr. Schnare	Sun 3/6/2011 11:11 AM	302 KB	ATI March 6 letter	
Dr. Schnare	Thu 2/17/2011 8:01 PM	8 KB	Re: VFOIA to the University of Virginia -- N	

(post 9/30/11)

From: Dr. Schnare (Sent)

	Dr. Schnare	Phone call agenda	Mon 10/3/2011 9:02 AM	15 KB
	Dr. Schnare	Re: Follow-up Conversation	Thu 9/29/2011 2:32 PM	22 KB
	Dr. Schnare	Re: Follow-up Conversation	Thu 9/29/2011 12:54 PM	16 KB
	Dr. Schnare	Re: Proposal regarding records selection	Wed 9/21/2011 4:15 PM	14 KB
	Dr. Schnare	Re: Attached Letter	Fri 9/2/2011 2:33 PM	482 KB

From: Dr. Schnare (Inbox)

	Dr. Schnare	Re: American Tradition Institute v. UVA	Wed 9/14/2011 2:41 PM	15 KB
	Dr. Schnare	ATI v UVA CL 11-3236 Petitioners' answers and responses to the Mann motions	Fri 9/9/2011 3:17 PM	2 MB
	Dr. Schnare	Re: Response Memorandum; Civil Action No. CL-11-3236	Fri 9/9/2011 3:09 PM	15 KB
	Dr. Schnare	Re: ATI v UVA CL 11-3236 Hearing Date and Time	Fri 9/9/2011 10:43 AM	23 KB
	Dr. Schnare	Re: ATI v UVA CL 11-3236 Motions Practice Communications	Tue 9/6/2011 3:19 PM	27 KB
	Dr. Schnare	Re: Your message	Tue 9/6/2011 11:05 AM	14 KB

David Schnare to Madelyn Wessel

EXHIBIT
tabbies
30

Wessel, Madelyn (mfw2y)

From: Wilkerson, Elizabeth (epw3m)
Sent: Thursday, October 13, 2011 11:01 AM
To: Wessel, Madelyn (mfw2y)
Cc: Kast, Richard (rck4p)
Subject: two Schnare emails
Attachments: 2011-02-11 phone recap.JPG; 2011-02-15 email.JPG; 2011-02-15 ATI vs R&V.JPG

Madelyn –

Here are the two emails, plus the attachment to one, that I received from David Schnare during the time period you requested. The telephone call he recaps in one email took place during normal business hours on Feb. 9, 2011.

Please let me know if you need anything further from me.

All the best,
Elizabeth

Elizabeth P. Wilkerson
Special Projects Officer
Office of Public Affairs
University of Virginia
PO Box 400229
Charlottesville, Virginia 22904-4229
(434) 924-3938 (office)
(434) 249-1415 (mobile)
(434) 924-0938 (fax)